156-649

Ob. 69.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 173.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN B. GILL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED MAY 18, 1891.

See 5

(14,650.)

PHILADELPHIA LAW ASSOCIATION

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1 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judges of the supreme court of the State of Arkansas, Greeting:

Because in the record, pleadings, and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Arkansas before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John B. Gill, plaintiff, and St. Louis and San Francisco R'y, defendants, wherein was drawn in question the construction and validity of certain clauses, articles, sections, and amendments of the Constitution of and laws of the United States of America, and the decision was against title, rights, privileges, and franchises specially set up, based upon claims and founded under and upon such clauses, articles, sections, and amendments of the Constitution of and laws of the United States, a manifest error hath happened, to the great damage of the said St. Louis and San Francisco R'y Co., as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of Jan'y, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

{ The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A. }

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America, Eastern District of Arkansas.

Allowed by—
S. R. COCKRILL, *Chief Justice.*

Return of Writ of Error.

I, William P. Campbell, clerk of the supreme court of Arkansas, hereby certify that, in obedience to the mandate of the foregoing writ of error, a duly-certified transcript, under the seal of said court,

of the record and proceedings in the cause therein stated, with all things concerning the same.

In testimony whereof I hereto set my hand as clerk of said supreme court and affix the seal of said court, at my office, in the city of Little Rock, this 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

3 *Citation.*

The United States of America to John B. Gill, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein The St. Louis and San Francisco Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. R. Cockrill, *S. R. Cockrill*, judge of the supreme court of the State of Arkansas, this 17th day of January, A. D. 1891.

Seal of the Supreme Court of Arkansas.

S. R. COCKRILL.

3½ *Return on Citation.*

I hereby acknowledge service of the within citation this 17th day of Feb., A. D. 1891.

DAN. W. JONES & J. V. WALKER,
Attorneys for Appellee in this Cause in Supreme Court of State of Ark's.

4 *Transcript from Washington Circuit Court.*

Pleas before the Honorable J. M. Pitman, judge of the Washington circuit court, had on the 9th day of November, 1887, in the case of—

JOHN B. GILL, Plaintiff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Defendant.

} Action for Penalty for Overcharge for Passenger Rate, &c.

On this the 1st day of October, 1887, the plaintiff, John B. Gill, filed his complaint against the defendant, The St. Louis and San Francisco Railway Company, which complaint is in words and figures as follows:

5 *Complaint.*

In the Washington Circuit Court, Fall Term, 1887.

JOHN B. GILL, Plaintiff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Defendant.

The plaintiff, for cause of action herein, says that he is a citizen of Washington county, Arkansas, and was at the time of the injuries hereinafter complained of; that the defendant is a corporation and company owning and operating a line of railroad in the State of Arkansas known as the St. Louis and San Francisco railroad, the said line of railroad so owned and operated in the State of Arkansas is more than seventy-five miles in length; that the def't is a common carrier and engaged in the business of transporting passengers for hire; that the maximum rate allowed by law to be charged by defendant for transporting any passenger in the manner known as first-class passage is three cents per mile for each mile intervening between the starting point and point of destination on said line; that plaintiff, on the 11th day of July, 1887, desiring to be conveyed by defendant in the manner known as first-class passage from Springdale to Rogers, a distance of eleven miles, said points being stations upon said line of railroad, entered a passenger train of defendant at Springdale and was conveyed by defendant in the manner known as first-class passage to Rogers, a station of said line; that on said 11th day of July, 1887, for the transportation of plaintiff in the manner known as first-class passage the defendant, contrary to law and in violation of plaintiff's rights, did charge, demand, and

6 receive of and from the said plaintiff the sum of five cents per mile for each mile of road intervening between said points, Springdale and Rogers, the number of miles intervening being eleven and the amount demanded, charged, and received by defendant of and from the plaintiff being 55 cents. For the violation of plaintiff's rights in charging, demanding, and receiving from plaintiff more than three cents per mile for each mile that plaintiff was transported as aforesaid plaintiff ought to recover of and from defendant the sum of three hundred dollars, with costs and a reasonable attorney's fee. Wherefore he prays judgment.

II.

The plaintiff, for cause of action, says that the plaintiff is and was at the time of the injuries hereinafter complained of a citizen of Washington county, Arkansas; that defendant is a corporation and company owning and operating a line of railroad within the State of Arkansas known as the St. Louis and San Francisco Railway Company; that said line of railroad is more than seventy-five miles in length; that the maximum rate of transportation of any passenger in the manner known as first-class passage allowed by law to

be charged by defendant is three cents per mile for each mile intervening between starting points and points of destination on said line; that on the 20th day of May, 1887, plaintiff went to the passenger depot of defendant, in the town of Springdale, and applied at the ticket office for a ticket entitling plaintiff to be conveyed by defendant in the manner known as first-class passage from Springdale to Fayetteville, a station on said line, defendant then and there being a common carrier and being engaged in the business of transportation for hire, the distance being between said points upon said line ten miles; that defendant then and there demanded of plaintiff the sum of five cents per mile for each mile intervening between said points Springdale and Fayetteville; that plaintiff offered and tendered defendant then and there three cents per mile for each mile intervening between said points; that plaintiff immediately proceeded to
7 the platform of said depot established and maintained by defendant for the accommodation of passengers entering and departing from trains of defendant and, in an orderly manner, entered a passenger car of defendant for the purpose of being transported to Fayetteville as aforesaid; that a short time after the passenger train as aforesaid pulled out from said depot the defendant, by its agent, the conductor on said train, did, then and there, in violation of plaintiff's rights, demand of and from plaintiff the sum of five cent- per mile between the points Springdale and Fayetteville; that plaintiff tendered the defendant the full amount required by law, three cents per mile for each mile between Springdale and Fayetteville, but defendant, by its agent, the conductor aforesaid, stopped the train and ejected this plaintiff therefrom. For demanding, in violation of law and plaintiff's rights, more than three cents per mile for each mile upon the line of defendant's road between said points Springdale and Fayetteville this plaintiff ought to recover the sum of three hundred dollars, with costs and a reasonable attorney's fee; for which he prays judgment.

III.

The plaintiff, for his cause of action, states that he is a citizen of Washington county, Arkansas, and was at the time of the injuries hereinafter complained of; that the defendant is a corporation and company owning and operating a line of railroad in the State of Arkansas known as the St. Louis and San Francisco Railway Company; the said line of railroad so owned and operated in the State of Arkansas is more than seventy miles in length; that the defendant is a common carrier and engaged in the business of transporting passengers for hire; that the maximum rate allowed by law to be charged by defendant for transporting any passenger in the manner known as first-class passage is three cents per mile for each mile intervening between the starting point and the point of desti-
8 nation on said line; that plaintiff, on the 13th day of July, 1887, desiring to be conveyed by defendant in the manner known as first-class passage from Springdale to Fayetteville, a dis-

tance of ten miles, said point- being stations upon said line of railroad, entered a passenger train of defendant at Springdale and was conveyed by defendant in the manner known as first-class passage to Fayetteville, a station of said line; that on the said 13th day of July, 1887, for the transportation of plaintiff in the manner known as first-class passage the defendant, contrary to law and in violation of plaintiff's rights, did charge, demand, and receive of and from plaintiff the sum of five cents per mile for each mile intervening between said points, Springdale and Fayetteville, the number of miles intervening being ten and the amount charged, demanded, and received being fifty cents. For the violation of plaintiff's rights in charging, demanding, and receiving of and from plaintiff more than three cents per mile for each mile that plaintiff was transported by defendant as aforesaid plaintiff ought to recover of and from the defendant the sum of three hundred dollars, with costs and reasonable attorney's fee. Wherefore he prays judgment.

IV.

The plaintiff, for cause of action against the defendant herein, states that he is a citizen of Washington county, Arkansas, and was at the time of the injuries hereinafter complained of; that the defendant is a corporation and company owning and operatin- a railroad within the State of Arkansas known as the St. Louis and San Francisco railroad; the said line of railroad so owned and operated aforesaid in the State of Arkansas is more than seventy-five miles in length; that the defendant is a common carrier and engaged in the business of transporting passengers for hire; that the maximum rate allowed by law to be charged by defendant for transporting any passenger in the manner known as first-class passage is
9 three cents per mile for each mile intervening between the starting point and the point of destination on said line; that plaintiff on the 11th day of July, 1887, desiring to be conveyed by defendant in the manner known as first-class passage from Rogers to Springdale, a distance of eleven miles, said points being stations upon said line of railroad, entered a passenger train of defendant at Rogers and was conveyed by defendant in the manner known as first-class passage to Springdale, a station of said line; that on the said 11th day of July, 1887, for the transportation of plaintiff in the manner known as first-class passage the defendant, contrary to the law and in violation of plaintiff's rights, did charge, demand, and receive of and from the plaintiff the sum of five cents per mile for each mile of road intervening between said points, Rogers and Springdale, the number of miles intervening being eleven and the amount charged, demanded, and received being fifty cents, charged, demanded, and received of and from the plaintiff by the defendant. For the violation of plaintiff's rights in charging, demanding, and receiving of and from plaintiff more than three cents per mile for each mile that plaintiff was transported by defendant as aforesaid plaintiff ought to recover of and from the defendant the sum of

three hundred dollars, with all costs and a reasonable attorney's fee, for which he prays judgment.

V.

The plaintiff, for his cause of action herein against the defendant, states that he is a citizen of Washington county, Arkansas, and was at the time of the injuries hereinafter complained of; that the defendant is a corporation and company owning and operating a railroad in the State of Arkansas and known as the St. Louis and San Francisco railroad; that the said line of railroad so owned and operated aforesaid in the State of Arkansas is more than seventy-five miles in length; that the defendant is a common carrier and engaged in the business of transporting passengers for hire; that the maximum rate allowed by law to be charged by defendant for
10 transporting any passenger in the manner known as first-class passage is three cents per mile for each mile intervening between the starting point and the point of destination; that plaintiff, on the 13th day of July, 1887, desiring to be conveyed by the defendant, in the manner known as first-class passage from Fayetteville to Springdale, a distance of ten miles, said points being stations upon said line of railroad, entered a passenger train of defendant, at Fayetteville, and was conveyed by defendant in the manner known as first-class passage to Springdale, a station of said line; that on said 13th day of July, 1887, for the transportation of plaintiff in the manner known as first-class passage the defendant, contrary to law and in violation of plaintiff's rights, did charge, demand, and receive of and from the plaintiff the sum of five cents per mile for each mile of road intervening between said points, Fayetteville and Springdale, the number of miles intervening being ten and the amount charged, demanded, and received by defendant of and from the plaintiff being fifty cents. For the violation of plaintiff's rights in charging, demanding, and receiving of and from plaintiff more than three cents per mile for each mile that plaintiff was transported by defendant as aforesaid plaintiff ought to recover of and from defendant the sum of three hundred dollars, with costs and a reasonable attorney's fee. Wherefore he prays judgment.

JOHN B. GILL, *Plaintiff*,
By J. V. WALKER, *His Att'y*.

11 *Summons.*

On this the 1st day of October, 1887, summons was issued herein by the clerk of the Washington circuit court, and on the 4th day of October, 1887, was properly served on the defendant herein.

On the 6th day of November, 1887, it being the 12th judicial day of the October term, 1887, of this court, the defendant filed an answer to the plaintiff's complaint, the record of which filing is in words and figures as follows:

JOHN B. GILL, Plaintiff,
vs.
THE ST. L. & S. F. R'Y CO., Defendant.

Comes the defendant, by attorney, and files and answer herein.

On this the 7th day of November, 1887, the defendant files its answer to the complaint of the plaintiff herein; which answer is in words and figures as follows:

12 *Answer.*

STATE OF ARKANSAS,
County of Washington.

In the Circuit Court, October Term, 1887.

JOHN B. GILL, Plaintiff,
—
ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, Defendant. } Answer.

Defendant, for answer to the 1st count of the plaintiff's petition herein, not waiving but expressly insisting that plaintiff's petition does not state facts sufficient to constitute a cause of action and reserving the right to hereafter take advantage thereof, denies that it is the owner of or operating a line of railroad in the State of Arkansas known as the St. Louis and San Francisco railroad; denies that said railroad is more than 75 miles in length; denies that it is or was at the time plaintiff's petition mentioned engaged, as a common carrier, in the transportation of passengers between any points and stations, as in said petition alleged, upon such a line of railroad; denies that the maximum rate allowed by law to be charged by defendant for the transportation of any passenger in the manner in plaintiff's petition described over any line of road owned or operated by it in said State in the manner known as first-class passage is 3 cents per mile, and avers the fact to be that, under the laws of said State, it could rightfully charge 5 cents per mile for such service on any line of railroad operated or owned by it in said State; denies that on the 11th day of July, or at any other time, the plaintiff was transported by defendant, in the manner known as first-class passage, from Springdale to Rogers, a distance of 11 miles, or
13 any other distance, in the manner and under the circumstances in the plaintiff's petition mentioned; denies that — the times aforesaid, or at any other, it did, in violation of plaintiff's rights, by way of compensation for the transportation of plaintiff between the points aforesaid, charge, demand, or receive of and from plaintiff the sum of five cents per mile for each mile intervening between such points; denies that plaintiff is entitled to or should recover the sum of $300.00 or any other sum herein.

II.

Defendant, for another and further answer to the first count of the petition of the plaintiff herein, avers that the laws referred to in said petition is a pretended enactment of the legislature of the State of Arkansas known as "An act to regulate the rates of charges for the carriage of passengers by railroads," pretended to have been approved April 4th, 1887, but which in fact was never passed by the legislature of the State of Arkansas nor signed nor approved by the governor of said State in the manner required by the constitution and laws thereof; and defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's petition mentioned provided that the legislature of said State should have and possess the power to make and determine rules of and for its proceedings; that the legislature whose pretended enactment is set forth in said petition did make, determine, and publish rules for its government, and which were known as the joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

14 9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and report the same forthwith to their respective houses.

11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the house of *the* representatives and then by the president of the senate.

12. When a bill has been signed by the speaker of the house and president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of the respective houses.

And defendant further avers that the pretended enactment aforesaid was never enrolled by the clerk of the house in the manner required by said rule seven; that said pretended act or bill was never reported to either the house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate

as required by said rule ten; that said pretended bill was never signed by the speaker of the house of representatives nor the president of the senate as required by rule 11; that said pretended bill was not delivered to the governor of said State of Arkansas
15 by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or senate of said State on the day the same was delivered or any other day as required by rule twelve; that a certain law was duly enrolled, reported, compared, signed, and delivered to said governor as required by said rules, but that subsequent to the delivery to said governor it was wrongfully interlined and interpolated so as to include the section relative to maximum rates relied upon by plaintiff herein and which, as enrolled, signed, and delivered to him, it did not contain, and that such pretended law so wrongfully interlined, changed, and altered is the one referred to in plaintiff's petition, and is null, of no effect, and void.

III.

Defendant, for another and further answer to the first count of the petition of the plaintiff herein, avers that the stations of Springdale and Rogers in said petition mentioned are on the line of the St. Louis, Arkansas and Texas railway (of Arkansas), for the purpose of constructing which the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was organized on the 16th day of April, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the northern boundary line of Arkansas, thence southwest-ardly via *of* Springdale and Rogers to Fayetteville, in said State.

That by the statutes of said State in force at the time of incorporation of said railway company as aforesaid it was provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation to be paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that while the legislature might when any such railroad should be opened
16 for use from time to time alter or reduce the rates of tolls, fares, freights, or other profits upon such road, yet it was further provided that the same should not, without the consent of the corporation, be so reduced as to produce for said profits less than 15 % per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended to be made by the secretary of state he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did annually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as to it should seem meet and proper.

That said St. Louis, Arkansas and Texas Railway Company (of

Arkansas) was connected at its northern terminus with the railway of the St. Louis, Arkansas & Texas Railway Company (of Missouri), a corporation organized and existing under the general laws of the State of Missouri and owning a railroad extending from such terminus to the town of Plymouth, in Missouri.

That said St. Louis, Arkansas & Texas railway (of Arkansas) was connected at its southern terminus, which is 100 yards south of the present station at Fayetteville, with the railroad of the Missouri, Arkansas and Southern Railway Company, a corporation organized under the laws of the State of Arkansas and running from said southern terminus of the St. Louis, Arkansas and Texas railway (of Arkansas) southwardly to the town of Fort Smith, in the State last aforesaid.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing either under general or special laws and owning railroads constructed wholly or in part —,

when completed and connected, would form one continuous
17 line of railroad continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, privileges, rights, and immunities which belonged to or rested upon either of the companies making such consolidation.

That at said time it was also provided by the laws of the said State of Missouri, which have remained and are yet in force, that any two or more companies existing under either general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether without or within the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which rested upon either of the companies making the consolidation.

That on the 10th day of June, A. D. 1881, said three corporations *most* named consolidated their companies in the manner required by the laws of said States of Arkansas and Missouri into a corporation known as the St. Louis, Arkansas and Texas Railway Company (consolidated).

That at the time of such consolidation said Missouri, Arkansas & Southern railway had not yet been completed; that the line proposed and which was afterwards constructed was laid out and surveyed through a mountainous and almost uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was
18 also the St. Louis, Arkansas & Texas Railway Company

(consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's petition mentioned are situated.

That the railways of the said last-mentioned corporation connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis & San Francisco Railway Company, a corporation organized and existing under the general laws of the State of Missouri and the several acts of the Congress of the United States, and formed therewith a connecting and continuous line of railway running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of the States of Arkansas and of Missouri that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad with all its rights, privileges, franchises, immunities, real estate, and other property, the whole or the part of which was in the State of Missouri and constructed, owned, or leased by any other company, if the lines of the roads of said companies were connected and continuous, and that any railroad corporation incorporated under the laws of said State of Arkansas whose road was wholly or in part constructed and in operation was authorized and might sell, lease, or otherwise dispose of the whole or any part of its railroad, with all the rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining, to any connecting railroad or any railroad corporation then or thereafter organized or existing under the laws of said State of Missouri or of the United States or of both.

That in the manner provided by the statutes of the States of Missouri and Arkansas said St. Louis, Arkansas & Texas Railway Company (consolidated) did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the St. Louis & San Francisco Railway Company all of its railroad in the said States
19 of Arkansas and Missouri, together with all its rights, privileges, franchises, and immunities thereunto belonging or appertaining.

And defendant avers that by the statutes of said State in force at the time said State of Arkansas did enter into a contract with said St. Louis, Arkansas and Texas Railway Company (of Arkansas), by which the said State granted to the said railway company, its successors and assigns, the privileges and franchises of making and fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares, charging tolls for the transportation of passengers at such sums as would enable it to realize a profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the law of said State in force as aforesaid it was also provided that any company with which said St. Louis, Arkansas & Texas Railway Company (of Arkansas) might consolidate should possess all the franchises, powers, rights, and privileges possessed at the time of consolidation by said last named company; that by reason and force thereof said St. Louis, Arkansas & Texas Railway

Company (consolidated) acquired and possessed the same rights, powers, privileges, and franchises which belonged or appertained to said St. Louis, Arkansas & Texas Railway Company (of Arkansas).

That, relying upon the faith of the contract and agreement of the said State of Arkansas with said railway company aforesaid that no regulation of its rights to charge rates, fares, or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., and in express consideration thereof, said St. Louis & San Francisco Railway Company did purchase of said St. Louis, Arkansas & Texas Railway Company (consolidated) aforesaid its line of railway and did
20 assume all of its debts and obligations in express consideration of obtaining the right and privilege of exercising the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually paid in of said St. Louis, Arkansas & Texas Railway Company (of Arkansas) and the other consolidating companies.

That said railway, although completed for about five years, has never at any time earned in profits an amount equal to three per cent. on the capital actually paid in of St. Louis, Arkansas & Texas Railway Co. (of Arkansas) or of any of the consolidating companies aforesaid or of the said consolidated company; that the net earnings or profits of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in or on the amount actually expended in the construction of said lines of railway aforesaid, and that if defendant is required to charge no more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof.

And defendant avers that the incorporation of the St. Louis, Arkansas & Texas Railway Company (of Arkansas), the consolidation of railroads as aforesaid, and the sale of the consolidated railroad to the defendant were each and all contracts made and entered into upon the faith that the contracts of the State of Arkansas with said several companies would not be broken.

And defendant avers that the consolidation of said companies as aforesaid and the sale of the company so formed of its railway to defendant each severally became and were compacts made between the States of Missouri and Arkansas with each other and with said consolidated company and with defendant, respectively, and to all of the rights, privileges, powers, and immunities belonging to the former the defendant has succeeded; that the act of the legislature of Arkansas (of 1887), attempting to fix passenger rates
21 as aforesaid, in so far as it relates to the defendant's line of railway, never received the assent of the State of Missouri or of the defendant; that it is an infringement upon the powers of the defendant and an impairment of the obligations of said compacts aforesaid, and an attempted interpretation of said compact, change, an- alteration thereof by said State of Arkansas without the consent of the State of Missouri or of the defendant.

Wherefore the defendant avers that the pretended law in plaintiff's petition mentioned is in violation of the laws and constitution of the State of Arkansas, impairs the obligations of the several compacts and contracts entered into upon the faith thereof as aforesaid, in violation of section ten, article 1, of the Constitution of the United States, and is null and void.

IV.

Defendant, for another and further answer to the first count of the petition of plaintiff herein, avers that the St. Louis, Arkansas & Texas Railway Company (of Arkansas), hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently, to wit, in the manner required by laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas & Texas Railway Company (of Missouri) and the Missouri, Arkansas and Southern Railway Company, whereby it did make joint stock with said companies forming the St. Louis, Arkansas & Texas Railway Company (consolidated).

That subsequently thereto said consolidated railway company did, in the manner required by the law in force at the time, sell and convey its railway franchises, privileges, and immunities thereto appertaining to the defendant; and defendant avers that the general laws of said State in force at the several dates last here-
22 inbefore mentioned formed the charter of the St. Louis, Arkansas and Texas Railway Company (of Arkansas) and said St. Louis, Arkansas and Texas Railway Company (consolidated), to which the defendant company has succeeded, and under which and an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at Van Buren, Crawford county, Ark.," approved July 3rd, 1882, and various other acts of the Congress of the United States and the general laws of the States of Missouri and Arkansas it is authorized to and does operate and maintain said line.

And defendant avers that by section (6), article (12), of the constitution of the said State of Arkansas, in force at the several times hereinbefore mentioned, it was provided that no charter of any corporation should be altered, revoked, annulled, or repealed in such a manner as to do injustice to the corporation; that the present owners of the capital stock of the defendant company are the same and identical persons who incorporated and owned the entire capital stock of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas). Defendant avers that if said rates of fare in plaintiff's petition mentioned are established as a maximum beyond which the defendant cannot charge it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's petition mentioned are situated is one which was highly expensive to construct and is highly expensive

to maintain; that the actual cost of transporting passengers over said division and the maintenance of the road in condition exceeds the price fixed as a maximum by the pretended law aforesaid, to wit, the sum of three cents per mile.

Wherefore defendant says that said pretended act is unreasonable and does this defendant and the incorporation of the said St. Louis,
Arkansas & Texas Railway Co. (of Arkansas), which con-
23 structed said line — railway, and their successors who succeeded to their rights and privileges a material injustice, and is, therefore, in violation of said constitution of Arkansas and null and void.

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Defendant, for another and further answer to the first count of the petition of the plaintiff herein, avers that the line of railway aforesaid in plaintiff's petition mentioned on which the stations therein described are located was constructed through a country which necessitated the expenditure of large sums of money and which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, trestles, and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the sum of three cents per mile; that the charge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this answer described is a reasonable fare and just charge, and that such sum is not an excessive charge for transporting passengers; that the charge of five cents per mile being not excessive and the charge of three cents per mile being unreasonable and unjust, said law is unreasonable and authorizes the taking of private property for public use without just compensation and without due process of law, in violation of the 5th and 14th amendments to the Constitution of the United States, and is illegal and void.

VI.

Defendant, for another and further answer to the 1st count of the petition of plaintiff herein, avers that said pretended act discriminates between railroads of the same class in this, that railroads seventy-five
miles in length or less owned by separate corporations and
24 not operated by corporations who own other lines of railroad are permitted under the provisions thereof to charge the sum of five cents per mile, while railroads of the same length and same class which may be operated or controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discrimination between different rail-

roads of the same class and is therefore in conflict with and in violation of article II of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

And, for another and further answer to the 1st count of the petition of the plaintiff herein, defendant avers that by the laws of said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as though fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting line there should remain and appertain to said line so consolidated all the rights, privileges, franchises and immunities, liabilities and obligations which appertained or belonged to said company before such consolidation, and that the condition for all purposes should remain the same as though no such consolidation had been effected; that said St. Louis, Arkansas and Texas Railway Company (of Arkansas) is less than seventy-five miles in length; and defendant avers that such being the case, and that said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length the said defendant railway company had the right to charge thereon a sum not exceeding five cents per mile.

25 VIII.

Defendant, for another and further answer to the 1st count of the petition of plaintiff herein, says that if the plaintiff was carried by defendant, as in his petition mentioned, it was for the sole purpose of imposing upon said railroad company the penalty which is provided by said pretended act of the legislature of the State of Arkansas; and defendant avers that said plaintiff was induced and encouraged to said action for the sole purpose aforesaid and was not a passenger for either business or pleasure or ordinary purposes, but was on said train for the sole purpose of speculating in said penalty.

Wherefore defendant says that the action herein sought to be maintained is opposed to public policy and the plaintiff should not be allowed to recover.

IX.

Defendant, for another and separate answer to the 1st count of the petition of plaintiff herein, says that any sum which the plaintiff may have paid the defendant company for any services rendered by it in the carriage and transportation of the plaintiff as a passenger or otherwise was voluntarily paid, without protest or objection on the part of the plaintiff.

Wherefore defendant says that the plaintiff should not, upon the facts in his petition stated, be allowed to recover herein.

X.

Defendant, for another and further answer to the 1st count of the petition of the plaintiff herein, avers that the line of railroad herein described is and was at the dates therein mentioned by an act of the Congress of the United States entitled "An act granting the right of way to the State of Missouri," etc., approved June 10th, 1882, and an act of Congress entitled "An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific ocean," ap-
26 proved July 27th, 1866, and an act of Congress entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, and an act of Congress entitled "An act to grant a right of way for a railway and telegraph line through the lands of the Choctaw and Chic-asaw nations of Indians to the St. Louis and San Francisco Railway Company and for other purposes," approved August 2nd, 1882, and various other acts of Congress of the United States declared to be a post and military route and national public highway of the United States for postal, military, and all other governmental services, and subject only to such regulation as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon, and that the right to fix the rates and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself, and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in the plaintiff's petition mentioned is null and void as to this defendant.

XI.

Defendant, for another and further answer to the first count of the plaintiff's petition herein, says that previous to the consolidation of said lines hereinbefore set forth in this answer said St. Louis, Arkansas and Texas Railway Co. (of Arkansas), being in need of money for the purpose of continuing the *of* constructi*ng* — its railroad, did place upon its property a deed of trust to secure the payment of five hundred thousand dollars of its interest-bearing seven % bonds, which bonds were placed upon the market and sold to various and numerous *bona fide* purchasers, each and all of whom were induced to and did purchase such bonds upon the faith of the contract and agreement of said State of Arkansas with said railway com-
27 pany, whereby it was agreed by the constitution and laws of the former that said company should have the right to charge such rates of fares or freights as would enable it to earn fifteen per cent. per annum upon the capital actually paid in and used in the construction of its line of railway and the constitutional guaranty of said State that the charter of said company, hereinbefore in this answer set forth, should not be altered, revoked, or annulled in such a manner that injustice should be done to its corporation; and de-

fendant avers that if the defendant is required by the laws of said State or any pretended enactment thereof to charge no more than three cents per mile for each passenger carried by it its charter will be altered, revoked, and annulled in such a manner as to do a material injustice to its corporators, and that thereby said company will be deprived of the power to earn a sufficient sum from the operation of the said St. Louis, Arkansas and Texas railway (of Arkansas) to pay the annual interest on the bonds secured by the mortgage hereinbefore mentioned, and that if said pretended law in plaintiff's petition mentioned is enforced default will be made in the payment of the principal and interest of the bonds aforesaid.

Defendant, for answer to the second paragraph to the plaintiff's petition herein, not waiving but expressly reserving the right to hereafter take advantage of the fact that plaintiff's petition does not state facts sufficient to constitute a cause of action, denies that the towns of Springdale and Fayetteville in said petition mentioned are towns situated on the St. Louis and San Francisco railway, as in said petitition mentioned, but avers the fact to be that said towns are situated upon the St. Louis, Arkansas and Texas railway (of Arkansas); denies that the defendant owns or operates a line of railroad in the State of Arkansas and is doing a general freight and passenger business for hire; denies that the line of railroad known as the St. Louis and San Francisco railroad so operated in
28 Arkansas is more than 75 miles in length; denies that the maximum passenger rate allowed by law on the defendant's railway in said State is or was at the times in said petition mentioned three cent- per mile for carrying each passenger in the manner known as first-class passage, and avers the fact to be that the maximum rate which the defendant was allowed by law to charge on all lines of railroad in said State owned or operated by it was five cents per mile.

Denies that on the 20th day of May or at any other time the plaintiff, desiring to travel from Springdale to Fayetteville, did proceed to the depot building in which was a ticket office established and operated by defendant and call upon the agent in chage of said depot and office for a ticket to Fayetteville or any other point on a line of road operated by defendant; denies that plaintiff did, at the time and place or in the manner in said petition described, tender or offer to an agent of defendant the sum of three cents per each mile of railroad intervening between the stations aforesaid or any other sum.

Denies that defendant did charge and demand the sum of five cents per mile for the transporting of plaintiff from said town of Springdale to Fayetteville or any other sum under the circumstances in said petition described.

Denies that defendant did unlawfully refuse to furnish or sell to plaintiff the ticket in his petition referred to, and denies that plaintiff at any time ever offered or tendered the full amount as fixed by law or any other amount.

Denies that plaintiff did, in the manner described in his petition or in any other, proceed to the platform of a depot of defendant

which was established and maintained for the accommodation of passengers and quietly and in an orderly way enter a car and take a seat in defendant's train.

29 Denies that an agent or conductor of defendant did, in the manner mentioned in said petition or otherwise, demand fare of said plaintiff.

Denies that defendant or any of its agents refused to accept or receive of defendant the fare in his petition alleged to have been tendered or that it or they demanded of plaintiff any other sum.

Denies that plaintiff was ejected from the car or train of defendant in the manner set forth in his petition.

Denies that plaintiff was damaged to the extent of three hundred dollars (300.00) or in any other amount or that he is entitled to receive an attorney's fee or any other sum herein.

II.

Defendant, for another and further answer to the 2nd count of the petition of plaintiff herein, avers that the law referred to in said petition is a pretended enactment of the legislature of the State of Arkansas known as "An act to regulate the rates of charges for the carriage of passengers by railroads," pretended to have been approved April 4th, 1887, but which in fact was never passed by the legislature of the State of Arkansas nor signed nor approved by the governor of said State in the manner required by the constitution thereof; and defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's petition mentioned provided that the legislature of said State should have and possess the power to make and determine the rules of and for its proceedings; that the legislature whose pretended enactment is set forth in said petition did make, determine, and publish rules for its government, and which were known as the "joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887;" that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

30 8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and report the same forthwith to their respective houses.

11. After the examination and report by the enrolling committee

each bill shall be signed, first by the speaker of the house of representatives and then by the president of the senate.

12. When a bill has been signed by the speaker of the house and the president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of the respective houses.

And defendant further avers that the pretended enactment aforesaid was never enrolled by the clerk of the house in the manner required by said rule seven; that said pretended act or bill was never reported to either the house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended act was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as required by said rule ten; that said pretended bill was never signed by the speaker of the house of representatives nor the president of the senate as required by rule 11; that said pretended
31 bill was not delivered to the governor of said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or senate of said State on the — the same was delivered or any other day as required by rule 12; that a certain law was duly enrolled, compared, signed, and delivered to said governor as required by said rules, but that subsequent to the delivery to said governor it was wrongfully interlined and interpolated so as to include the section relative to maximum rates relied upon by plaintiff therein and which, as enrolled, signed, and delivered to him, it did not contain, and that such pretended law so wrongfully interlined, changed, and altered is the one referred to in plaintiff's petition, and is null, of no effect, and void.

III.

Defendant, for another and further answer *on* the 2nd count of the petition of the plaintiff herein, avers that the stations of Springdale and Fayetteville in said petition mentioned are on the line of the St. Louis, Arkan-as and Texas railway (of Arkansas), for the purpose of constructing which the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the northern boundary of the State of Arkansas, thence southwestwardly via Springdale to Fayetteville, in said State.

That by the statutes of said State in force at the time of incorporation of said railway company as aforesaid it was provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation to be paid therefor, not to exceed the sum

of five cents per mile; and it was also further provided that while the legislature might when any such railroad should be opened
32 for use from time to time alter or reduce the rates of tolls, fares, freights, or other profits upon such road, yet it was further provided that the same should not, without the consent of the corporation, be so reduced for said profits as to produce less than fifteen per cent. per annum on the capital actually p-id in, nor unless on an examination of the amounts received and expended to be made by the secretary of state he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital actually paid in, and that until such profits did annually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as it should seem meet and proper.

That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its northern terminus with the railroad of the St. Louis, Arkansas and Texas Railway Company (of Missouri), a corporation organized and existing under the general laws of the State of Missouri and owning a railroad extending from such northern terminus to the town of Plymouth, in Missouri.

That said St. Louis, Arkansas and Texas Railway Company (in Arkansas) was connected at its southern terminus, which is 100 y'ds south of the present station at Fayetteville, with the railroad of the Missouri, Arkansas and Southern Railway Company, a corporation organized under the laws of the State of Arkansas and running from said southern terminus of the St. Louis, Arkansas and Texas railway (of Arkansas) southwardly to the town of Fort Smith, in the State last aforesaid.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing under either general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railroad continuing and running in the same general direc-
33 tion were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which belonged to or rested upon either of the companies making such consolidation.

That at said time it was also provided by the laws of the said State of Missouri, which have remained and are yet in force, that any two or more railroad companies existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether without or within the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immu-

nities which belonged to or rested upon either of the companies making such consolidation.

That on the 10th day of June, 1881, said three corporations last named consolidated their companies in the manner required by the laws of the said States of Arkansas and Missouri into a corporation known as the St. Louis, Arkansas and Texas Railway Company (consolidated).

That at the time of such consolidation said Missouri, Arkansas & Southern railway had not been completed; that the line proposed and which was afterwards constructed was laid out and surveyed through a mountainous and almost wholly uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was also the St. Louis, Arkansas and Texas Railway Company (consol-
34 idated), to construct and complete the proposed line on which the stations in plaintiff's petition mentioned are situated.

That the railways of the said last-mentioned corporation connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis and San Francisco Railway Company, a corporation organized and existing under the general laws of the State of Missouri and the several acts of Congress of the United States, and formed therewith a connecting and continuous line of railway running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of the States of Arkansas and Missouri that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad with all its rights, privileges, franchises, immunities, real estate, and other property, the whole or a part of which was in said State of Missouri and constructed, owned, or leased by any other company, if the lines of the roads of said companies were connected and continuous, and that any railroad corporation incorporated under the laws of the said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease, or otherwise dispose of the whole or any part of its railroad, with all the rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining, to any connecting railroad or any railroad corporation then or thereafter organized or existing under the laws of said State of Missouri or of the United States or of both.

That in the manner provided by the statutes of the States of Missouri and Arkansas said St. Louis, Arkansas and Texas Railway Company (consolidated) did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the St. Louis and San Francisco Railway Company all of its railway in the said States
35 of Arkansas and Missouri, together with all its rights, privileges, franchises, and immunities thereunto belonging or appertaining.

And defendant avers that by the statutes of said State in force

at the time said State of Arkansas did enter into a contract with said St. Louis, Arkansas and Texas Railway Company (of Arkansas), by which said State granted to said railway company, its successors and assigns, the privileges and franchises of making and fixing fares and charging tolls for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize a profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the laws of said State in force as aforesaid it was also provided that any company with which said St. Louis, Arkansas and Texas Railway Company (of Arkansas) might consolidate should possess all the franchises, powers, rights, and privileges possessed at the time of such consolidation by said last-named company; that by reason and force thereof said St. Louis, Arkansas and Texas Railway Company (consolidated) acquired and possessed the same rights, powers, privileges, and franchises which belonged to the said St. Louis, Arkansas and Texas Railway Company (of Arkansas).

That, relying upon the faith of the contract and agreement of said State of Arkansas with said railway company aforesaid that no regulation of its rights to charge rates, fares, or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., and in express consideration thereof, said St. Louis and San Francisco Railway Company did purchase of said St. Louis, Arkansas and Texas Rail-
36 way Company (consolidated) aforesaid its line of railway and did assume all of its debts and obligations in express consideration of obtaining the right and privilege of exercising the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Company (of Arkansas) and the other consolidating companies.

That said railway, although completed for about five years, has never at any time earned in profits an amount equal to three per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) or of any of the consolidating companies aforesaid or of the said consolidated company; that the net earnings or profits of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in or on the amount actually expended in the construction of said lines of railway aforesaid, and that if defendant is required to charge no more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof.

And the defendant avers that the incorporation of the St. Louis, Arkansas and Texas Railway Company (of Arkansas), the consolidation of the railroads as aforesaid, and the sale of the consolidated railroad to the defendant were each and all contracts made and entered into upon the faith that the contracts of the State of Arkansas with said several companies would not be broken.

And defendant avers that the consolidation of said companies as aforesaid and the sale by the company so formed of its railway to defendant each severally became and were compacts made between the States of Missouri and Arkansas with each other and with said consolidated company and the defendant, respectively, and to all the rights, privileges, and immunities belonging to the former the latter has succeeded; that the act of the legis-
37 lature of Arkansas (of 1887), attempting to fix passenger rates as aforesaid, in so far as it relates to the defendant's line of railway, never received the assent of the State of Missouri nor of the defendant; that it is an infringement of the powers of the defendants and an impairment of the obligations of said compacts aforesaid, and an attempted interpretation of said compact, change, and alteration thereof by said State of Arkansas without the consent of the State of Missouri or of the defendant.

Wherefore the defendant avers that the pretended law in plaintiff's petition mentioned is in violation of the laws and constitution of the State of Arkansas, impairs the obligation of the several compacts and contracts entered into upon the faith thereof as aforesaid, in violation of section ten, article 1, of the Constitution of the United States, and is null and void.

IV.

Defendant, for another and further answer to the 2nd count of the petition of plaintiff herein, avers that the St. Louis, Arkansas and Texas Railway Company (of Arkansas), hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently, to wit, in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas and Texas Railway Co. (of Missouri) and the Missouri, Arkansas & Southern Railway Company, whereby it did make joint stock with said companies forming the St. Louis, Arkansas and Texas Railway Company (consolidated).

That subsequently thereto said consolidated railway company did, in the manner required by law in force at the time, sell and convey its railway franchises, privileges, and immunities thereto appertaining to this defendant; and defendant avers that the general laws of said State in force at the several dates last here-
38 inbefore mentioned formed the charter of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas) and said St. Louis, Arkansas and Texas Railway Co. (consolidated), to which the defendant company has succeeded, and under which and an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at Van Buren, Crawford county, Ark.," approved July 3rd, 1882, and various other acts of Congress of the United States and the general laws of the States of Missouri and Texas it is authorized to and does operate and maintain said lines.

And defendant avers that by section (6), article (12), of the constitution of the said State of Arkansas, in force at the date hereinbefore mentioned, it was provided that no charter of any corporation should be altered, revoked, annulled, or repealed in such a manner as to do injustice to the incorporators; that the present owners of the capital stock of the defendant company are the same and identical persons who incorporated and owned the entire capital stock of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas). Defendant avers that if the said rates of fares in plaintiff's petition mentioned are established as a maximum beyond which this defendant cannot charge it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's petition mentioned are situated is one which was highly expensive to construct and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintainance of the road in condition exceeds the price fixed as a maximum by the pretended as law aforesaid, to wit, the sum of three cents per mile.

Wherefore defendant says that said pretended act is unreasonable and does this defendant and the incorporators of the said St. Louis, Arkansas and Texas Railway Co. (of Arkansas), which con-
39 structed said line of railway, and their successors who succeeded to their rights and privileges a material injustice, and is, therefore, in violation of said constitution of Arkansas and null and void.

V.

Defendant, for another and further answer to the 2nd count of the petition of plaintiff herein, avers that the line of railway aforesaid in plaintiff's petition mentioned on which the stations therein described are located was constructed through a country which necessitated the expenditure of large sums of money and which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, and tunnels are situated thereon, for the maintenan-e of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railroad exceeds the sum of three cents per mile; that the cha-ge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this answer described is a reasonable, fair, and just charge, and that such sum is not an excessive charge for transporting passengers; that the charge of five cents per mile being not excessive and the charge of three cents per mile being unreasonable and unjust, such law is unreasonable and authorizes the taking of private property for public use without just compensation and without due process of law, in violation of the 5th and 14th amendments to the Constitution of the United States, and is illegal and void.

VI.

Defendant, for another and further answer to the 2nd count of the petition of plaintiff herein, avers that said pretended act discriminates between railroads of the same class in this, that railroads seventy-five miles or less owned by separate corporations and operated by corporations which own other lines of railroad are permitted under
40 the provisions thereof to charge the sum of five cents per mile, while railroads of the same length and same class which may be operated or controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant — law is special legislation and makes arbitrary discrimination between different railroads of the same class and is therefore in conflict with and in violation of article II of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

And, for another and further answer to the 2nd count of the petition of the plaintiff herein, defendant avers that by the laws of said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as though fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting line there should remain and appertain to said line so consolidated all the rights, privileges, franchises and immunities, liabilities and obligations which appertained or belonged to said company before such consolidation, and that its condition for all purposes should be the same as if no such consolidation had been made; that said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) is less than seventy-five miles in length; and defendant avers that such being the case and the said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length the said defendant railway company had the right to charge the sum thereon not exceeding five cents per mile.

41 VIII.

Defendant, for another and further answer to the 2nd count of the petition of plaintiff herein, says that if the plaintiff was carried by defendant, as in his petition mentioned, it was for the sole purpose of imposing upon said railway company the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas; and defendant avers that said plaintiff was induced and encouraged to said action for the sole purpose aforesaid and was not a passenger for either business or pleasure or ordinary purposes,

but was on said train for the sole purpose of speculating in said penalty.

Wherefore defendant says that the action herein sought to be maintained is opposed to public policy and plaintiff should not be allowed to recover.

IX.

Defendant, for another and separate answer to the 2nd count of the petition herein, says that *if* any sum which the plaintiff herein may have paid the defendant company for any services rendered by it in the carriage and transportation of the plaintiff as a passenger or otherwise was voluntarily paid, without protest or objection on the part of the plaintiff.

Wherefore defendant says that the plaintiff should not, upon the facts in his petition stated, be allowed to recover herein.

X.

Defendant, for another and further answer to the 2nd count of the petition of the plaintiff herein, avers that the line of railroad herein described is and was at the dates therein mentioned by an act of the Congress of the United States entitled "An act granting the right of way to the State of Missouri," etc., approved June 10th, 1852, and an act of Congress entitled "An act granting
42 lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific ocean," approved July 27th, 1866, and an act of Congress entitled "An act to grant a right of way for a railroad and telegraph lines through the lands of the Choctaw and Chickasaw nations of Indians to the St. Louis and San Francisco railway and for other purposes," approved August 2nd, 1882, and an act of Congress entitled "An act act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, and various other acts of Congress of the United States declared to be a post and military route and national public highway of the United States for postal, military, and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons or property thereon, and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself, and *if* any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in the plaintiff's petition mentioned is null and void as to this defendant.

XI.

Defendant, for another and further answer to the 2nd count of the plaintiff's petition herein, says that previous to the consolidation of said lines, as hereinbefore in this answer set forth, said St. Louis,

Arkansas and Texas Railway Co. (of Arkansas), being in need of money for the purpose of continuing the work of constructing its railroad, did place upon its property a deed of trust to secure the payment of five hundred thousand dollars of its interest-bearing seven per cent. bonds, which bonds were placed upon the market and sold to various and numerous *bona fide* purchasers, each and all of whom were induced — and did purchase such bonds upon the faith of the contract and agreement of said State of Arkansas with said railway company, whereby it was agreed by the constitution and laws of the former that said company should have the right to charge such rates of fares and freights as would enable it to earn fifteen per cent. per annum upon the capital actually paid in and use- in the construction of its line of railway and the constitutional guaranty of said State that the charter of said company, hereinbefore in this answer set forth, should not be altered, revoked, or annulled in such a manner that injustice should be done to its incorporators; and defendant avers that if the defendant is required by the laws of said State or any pretended enactment thereof to charge no more than three cents per mile for each passenger carried by it its charter will be altered, revoked, and annulled in such a manner as to do a material injustice to its corporators, and that thereby said company will be deprived of the power to earn net a sufficient sum from the operation of the said St. Louis, Arkansas and Texas railway (of Arkansas) to pay the annual interest on the bonds secured by the mortgage hereinbefore mentioned, and that if said pretended law in plaintiff's petition mentioned is enforced default will be made in the payment of the principal and interest of the bonds aforesaid.

43

Answer to the Third Count.

Defendant, for answer to the 3rd count of plaintiff's petition herein, not waiving but expressly insisting that plaintiff's petition does not state facts sufficient to constitute a cause of action, denies that it is the owner of or operating a line of railroad in the State of Arkansas known as the St. Louis and San Francisco railroad; denies that said railroad is more than 75 miles in length, or that it is or was at the time in plaintiff's petition mentioned engaged, as a common carrier, in the transportation of passengers upon such a line of railroad between any points and stations, as in said petition alleged; denies that the maximum rate allowed by law to be charged by defendant for the transportation of any passenger in the manner in plaintiff's petition described over any line of road owned or operated by it in said State in the manner known as first-class passage is three cents per mile, and avers the fact to be under the laws of said State it could rightfully charge the sum of five cents per mile for such service on any line of railroad operated or owned by it in said State; denies that on the 13th day of July, 1887, or at any other time, the plaintiff was transported by defendant, in the manner known as first-class passage, from Springdale to Fayetteville, a distance of ten miles, or any other distance, in the manner and under the circumstances in the plaintiff's petition mentioned.

44

Denies that at the times aforesaid, or at any other (time) it did, in violation of plaintiff's rights, by way of compensation for the transportation of plaintiff between the points aforesaid, charge, demand, or receive of and from plaintiff the sum of five cents per mile for each mile intervening between such points.

Denies that plaintiff is entitled to or should recover the sum of $300.00 or any other sum herein.

II.

Defendant, for another and further answer to the 3rd count of the petition of the plaintiff herein, avers that the law referred to in said petition is a pretended enactment of the legislature of the State of Arkansas known as "An act to regulate the rates of charges for the carriage of passengers by railroads," pretended to have been approved April 4th, 1887, but which in fact was never passed by the legislature of the State of Arkansas nor signed nor approved by the governor of said State in the manner required by the constitution and laws thereof; and defendant further avers that by the constitution of the State of Arkansas it is and — at the dates in plaintiff's petition mentioned provided that the legislature of said State should have and possess the power to make and determine
45 rules of and for its proceedings; that the legislature whose pretended enactment is set forth in said petition did make and determine and publish rules for its government, and which were known as the joint rules of the house of representatives and senate of the State of Arkansas for the session of 1887; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and report the same forthwith to their respective houses.

11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the house of representatives and then by the president of the senate.

12. When a bill has been signed by the speaker of the house and president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of their respective houses; and defendant further

avers that the pretended enactment aforesaid was never enrolled by the clerk of the house in the manner required by said rule seven; that said pretended act or bill was never reported to either
46 the house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as required by said rule ten; that said pretended bill was never signed by the speaker of the house of the representatives nor the president of the senate as required by rule 11; that said pretended bill was not delivered to the governor of said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of the committee returned to either the house of representatives or senate of said State on the day the same was delivered or on any other day as required by rule twelve; that a certain law was duly enrolled, reported, compared, signed, and delivered to said governor as required by said rules, but that subsequent to the delivery to said governor it was wrongfully interlined and interpolated so as to include the section relative to maximum rates relied upon by plaintiff herein and which, as enrolled, signed, and delivered to him, it did not contain, and that such pretended law so wrongfully interlined, changed, and altered is the one referred to in plaintiff's petition, and is null, of no effect, and void.

III.

Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, avers that the stations of Springdale and Fayetteville in said petition mentioned are on the line of the St. Louis, Arkansas and Texas railway (of Arkansas), for the purpose of constructing which the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the northern boundary line of Arkansas, thence southwestwardly via Springdale to Fayetteville, in said State.

47 That by the statutes of said State in force at the time of the incorporation of said railway company as aforesaid it was provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation to be paid therefor, not to exceed the sum of five cents per mile; and it was also provided that while the legislature might when any such railroad should be opened for use from time to time alter or reduce the tolls, fares, freights, or other profits upon such road, yet it was further provided that the same should not, without the consent of the corporation, be so reduced as to produce for said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended to be

made by the secretary of state he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did annually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as to it should seem meet and proper.

That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its northern terminus with the railway of the St. Louis, Arkansas and Texas Railway Company (of Missouri), a corporation organized and existing under the general laws of the State of Missouri and owning a railroad extending from such northern terminus to the town of Plymouth, in Missouri.

That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its southern terminus, which is 100 yards south of the present station at Fayetteville, with the railway of the Missouri, Arkansas and Southern Railway Company, a corporation organized under the laws of the State of Arkansas and running from said southern terminus of the St. Louis, Arkansas and Texas
48 railway (of Arkansas) southwardly to the town of Ft. Smith, in the State last aforesaid.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railroad continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of railway, with all the powers, rights, privileges, and immunities which belonged to or rested upon either of the companies making such consolidation.

That at said time it was also provided by the laws of said State of Missouri, which have remained and are yet in force, that any two railroad companies existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether without or within the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which rested upon either of the companies making such consolidation.

That on the 10th day of June, 1881, said three corporations last named consolidated their companies in the manner required by laws of said States of Arkansas and Missouri into a corporation known as the St. Louis, Arkansas and Texas Railway Company (consolidated).

That at the time of such consolidation said Missouri, Arkansas and Southern railway had not yet been completed; that the line proposed and which was afterwards constructed was laid out and
49 surveyed through a mountainous country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large no. of years would not justify the expenditure.

That said railway company was without means, as was also the St. Louis, Arkansas and Texas Railway Company (consolidated), to complete the proposed line of railway on which the stations in plaintiff's petition mentioned are situated.

That the railways of the said last-mentioned corporations connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis and San Francisco Railway Company, a corporation organized and existing under the general laws of the State of Missouri and the several acts of the Congress of the United States, and formed therewith a connecting line of railway running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of said States of Missouri and Arkansas that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad with all the rights, privileges, franchises, immunities, real estate, and other property, the whole or a part of which was in the State of Missouri and constructed, owned, or leased by any other company, if the lines of the roads of said companies were connected and continuous and that any railroad corporation incorporated under the laws of said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease, or otherwise dispose of the whole or any part of its railroad, with all its rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining, to any connecting railroad or any railway corporation then or thereafter organized or existing under the laws of said State of Missouri or of the United States or of both.
50 That in the manner provided by the statutes of the said States of Missouri and Arkansas said St. Louis, Arkansas and Texas Railway Company (consolidated) did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the St. Louis and San Francisco Railway Company all of its railway in the said States of Missouri and Arkansas, together with all of the rights, privileges, franchises, and immunities thereunto belonging or appertaining; and defendant avers that by the statutes of said State in force at the time said State of Arkansas did enter into a contract with said St. Louis, Arkansas and Texas Railway Company (of Arkansas), by which the said State granted to said railway company, its successors and assigns, the privileges and franchises of fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to

realize a profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the laws of said State in force as aforesaid it was also provided that any company with which said St. Louis, Arkansas and Texas Railway Company (of Arkansas) might consolidate should have all the franchises, powers, rights, and privileges possessed at the time of such consolidation by said last-named company; that by reason and force thereof said St. Louis, Arkansas and Texas Railway Company (consolidated) acquired and possessed the same rights, powers, privileges, and franchises which belonged or appertained to said St. Louis, Arkansas and Texas Railway Company (of Arkansas).

That, relying upon the faith of the contract and agreement of said State of Arkansas with said railway company aforesaid that no regulation of its rights to charge rates, fares, or freights would
51 be exercised until the profits net upon the capital actually paid in to construct the line of railway did exceed fifteen per cent., and in express consideration thereof, said St. Louis and San Francisco Railway Company did purchase of said St. Louis, Arkansas and Texas Railway Company (consolidated) aforesaid its line of railway and did assume all of its debts and obligations in express consideration of obtaining the right and privilege of exercising the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Company (of Arkansas) and the other consolidating companies.

That said railway, although completed for about five years, has never at any time earned profits in an amount equal to three per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Company (of Arkansas) or of any of the consolidating companies aforesaid or of the said consolidated company; that the net earnings or profits of said railroad for the next ensuing two years will not exceed three per cent. of the capital actually paid in or on the amount actually expended in the construction of said lines of railway aforesaid, and that if defendant is required to charge no more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof.

And defendant avers that the incorporation of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas), the consolidation of the railroads as aforesaid, and the sale of the consolidated railroad to the defendant were each and all contracts made and entered into upon the faith that the contracts of the State of Arkansas with said several companies would not be broken.

And defendant avers that the consolidation of said companies as aforesaid and the sale of the company so formed of its railway to defendant each severally became and were compacts made between the States of Missouri and Arkansas with each other
52 and with said consolidated company and with the defendant, respectively, and to all of the rights, privileges, powers, and immunities belonging to the former the latter has succeeded;

that the act of the legislature of 1887, attempting to fix passenger rates as aforesaid, in so far as it relates to defendant's line of railway, never received the assent of the State of Missouri nor of the defendant; that it is an infringement of the powers of the defendant and an impairment of the obligations of said compacts aforesaid, and an attempted interpretation of said compact, change, and alteration thereof by said State of Arkansas without the consent of the State of Missouri or of defendant.

Wherefore defendant avers that the pretended law in plaintiff's petition mentioned is in violation of the constitution and laws of the State of Arkansas, impairs the obligations of the several contracts and compacts entered into upon the faith thereof as aforesaid, in violation of section ten, article 1, of the Constitution of the United States, and is null and void.

IV.

Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, avers that the St. Louis, Arkansas and Texas Railway Company (of Arkansas), hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently, to wit, in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas and Texas Railway Company (of Missouri) and the Missouri, Arkansas & Southern Railway Company, whereby it did make joint stock with said companies forming the St. Louis, Arkansas and Texas Railway Company (consolidated).

That subsequently thereto said consolidated railway company did, in the manner required by law in force at that time, sell
53 and convey its railway franchises, privileges, and immunities thereto appertaining to this defendant; and defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the St. Louis, Arkansas and Texas Railway Company (of Arkansas) and said St. Louis, Arkansas and Texas Railway Co. (consolidated), to which the defendant company has succeeded, and under which — an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Ark.," approved July 3rd, 1882, and various other acts of the Congress of the United States and the general laws of the States of Missouri and Texas it is authorized to and does operate and maintain said lines.

And defendant avers that by section six, article twelve, of the constitution of the said State of Arkansas, in force at the several dates hereinbefore mentioned, it was provided that no charter of any corporation should be altered, revoked, annulled, or repealed in such a manner as to do an injustice to the incorporators; that the present owners of the capital stock of the defendant company are the same and identical persons who incorporated and owned the entire capi-

tal stock of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas). Defendant avers that if said rates of fare in plaintiff's petition mentioned are established as a maximum beyond which this defendant cannot charge it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's petition mentioned are situated is one which was highly expensive to construct and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintenance of the road in condition exceeds the price fixed as a maximum by the pretended law aforesaid, to wit, the sum of three cents per mile.

Wherefore defendant says that said pretended act is unrea-
54 sonable and does this defendant and the incorporators of the said St. Louis, Arkansas and Texas Railway Co. (of Arkansas), which constructed said line of railway, and their successors who succeeded to their rights and privileges a material injustice, and —, therefore, in violation of said constitution of Arkansas and null and void.

V.

Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, avers that the line of railway aforesaid in plaintiff's petition mentioned on which the stations therein described are located was constructed through a country which necessitated the expenditure of large sums of money, which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, trestles, and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the sum of three cents per mile; that the charge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this answer described is a reasonable, fair, and just charge, and that such sum is not an excessive charge for transporting passengers; that the charge of five cents per mile being not excessive and the charge of three cents per mile being unreasonable and unjust, said law is unreasonable and authorizes the taking of private property for public use without just compensation or due process of law, in violation of the 5th and 14th amendments to the Constitution of the United States, is illegal and void.

VI.

Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, avers that said pretended act dis-
55 criminates between railroads of the same class in this, that railroads seventy-five miles or less in length owned by separate corporations and not operated by corporations which own other lines of railroad are permitted under the provisions thereof to charge the sum of five cents per mile, while railroads of the same length and

same class which may be operated or controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads. Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discrimination between different railroads of the same class and is therefore in conflict with and in violation of article II of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

And, for another and further answer to the 3rd count of the petition of plaintiff herein, defendant avers that by the laws of said State of Arkansas in force at the time of consolidation in the third count of this answer fully set forth, reference to which is now made as though fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting line there should remain and appertain to said line so consolidated all the rights, privileges, franchises, immunities, liabilities, and obligations which appertained or belonged to said company before such consolidation, and that its condition for all purposes should remain the same as though no such consolidation had been effected; that said St. Louis, Arkansas and Texas Railway Company (of Arkansas) is less than seventy-five miles in length; and
56 & 57 defendant avers that such being the case and the said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length the said defendant railway company had the right to charge thereon a sum not exceeding five cents per mile.

VIII.

Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, says that if the plaintiff was carried by defendant, as in his petition mentioned, it was for the sole purpose of imposing upon said railway company the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas; and defendant avers that said — was induced and encouraged to said action for the sole purpose aforesaid and was not a passenger for business, pleasure, or ordinary purposes, but was on said train for the sole purpose of speculating in said penalty.

Wherefore defendant says that the action herein sought to be maintained is opposed to public policy and the plaintiff should not be allowed to recover.

IX.

Defendant, for another and separate answer to the 3rd count of the petition of plaintiff herein, avers that any sum which the plain-

tiff may have paid the defendant company for any services rendered by it in the carriage and transportation of plaintiff as a passenger or otherwise was voluntarily paid, without protest or objection on the part of the plaintiff.

Wherefore defendant says that the plaintiff should not, upon the facts in his petition stated, be allowed to recover herein.

X.

58 Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, avers that the line of railroad therein described is and was at the dates therein mentioned by an act of the Congress of the United States entitled "An act granting the right of way to the State of Missouri," etc., approved June 10th, 1852, and an act of Congress entitled "An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific ocean," approved July 27th, 1866, and by an act of Congress entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford Co., Arkansas," approved July 3rd, 1882, and an act of Congress entitled "An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw nations of Indians to the Saint Louis and San Francisco railway company and for other purposes," approved August 2nd, 1882, and various other acts of the Congress of the United States declared to be a post and military route and national public highway of the United States for postal, military, and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon, and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself, and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in the plaintiff's petition mentioned is null and void as to this defendant.

XI.

59 Defendant, for another and further answer to the 3rd count of the petition of plaintiff herein, says that previous to the consolidation of said lines hereinbefore in this answer set forth, said St. Louis, Arkansas and Texas Railway Company (of Arkansas), being in need of money for the purpose of continuing the work of constructing its railroad, did place upon its property a deed of trust to secure the payment of five hundred thousand dollars of its interest-bearing seven per cent. bonds, which bonds were placed upon the market and sold to various and numerous *bona fide* purchasers, each and all of whom were induced to and did purchase such bonds upon the faith of the contract and agreement of said State of Arkansas with said railway company, whereby it was agreed by the constitution

and laws of the former that said company should have the right to charge such rates of fares and freights as would enable it to earn fifteen per cent. per annum upon the capital actually paid in and used in the construction of its line of railway and the constitutional guaranty of said State that the charter of said company, hereinbefore in this answer set forth, should not be altered, revoked, or annulled in such a manner as to do injustice to its incorporators; and defendant avers that if the defendant is required by the laws of said State to charge no more than three cents per mile for each passenger carried by it its charter will be altered, revoked, and annulled in such a manner as to do a material injustice to its corporators, and that thereby said company will be deprived of the power to earn net a sufficient sum from the operation of said St. Louis, Arkansas and Texas Railway Company (of Arkansas) to pay the annual interest on the bonds secured by the mortgage hereinbefore mentioned, and that if said pretended law in plaintiff's petition mentioned is enforced default will be made in the payment of the principal and interest of the bonds aforesaid.

Answer to 4th Count of Petition.

60 Defendant, for answer to the 4th count of plaintiff's petition, not waiving but expressly insisting that plaintiff's petition does not state facts sufficient to constitute a cause of action, and reserving the rights hereafter to take advantage thereof; denies that it is the owner of or operating a line of railroad in the State of Arkansas known as the St. Louis and San Francisco railroad; denies that said railroad is more than seventy-five miles in length; denies that it is or was at the times in plaintiff's petition mentioned engaged, as a common carrier, in the transportation of passengers upon such a line of railroad between any points and stations, as in said petition alleged; denies that the maximum rate allowed by law to be charged by defendant for the transportation of any passengers in the manner in plaintiff's petition described over any line of road owned or operated by it in said State in the manner known as first-class passage is three cents per mile, and avers the fact to be that under the laws of said State it could rightfully charge the sum of five cents per mile for such service on any line of railroad owned or operated by it in said State; denies that on the 17th day of July, 1887, or at any other time, the plaintiff was transported by defendant, in the manner known as first-class passage, from Rogers to Fayetteville, a distance of ten miles, or any other distance, in the manner and under the circumstances in plaintiff's petition mentioned.

Denies that at the times aforesaid, or at any other, it did, in violation of plaintiff's rights, by way of compensation for the transportation of plaintiff between the points aforesaid, charge, demand, or receive of and from plaintiff the sum of five cents per mile for each mile intervening between such points.

Denies that plaintiff is entitled to or should recover the sum of $300.00 *dollars* or any other sum herein.

61 II.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that the law referred to in said petition is a pretended enactment of the legislature of the State of Arkansas known as "An act to regulate the rates of charges for the carriage of passengers by railroads," pretended to have been approved April 4th, 1887, but which in fact was never passed by the legislature of the State of Arkansas nor signed nor approved by the governor of said State in the manner required by the constitution and laws thereof; and defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's petition mentioned provided that the legislature of said State should have and possess the power to make and determine rules of and for its proceedings; that the legislature whose pretended enactment is set forth in said petition did make, determine, and publish rules for its government, and which were known as the joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and report the same forthwith to their respective houses.

62 11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the house of representatives and then by the president of the senate.

12. When a bill has been signed by the speaker of the house and president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of the respective houses.

And defendant further avers that the pretended enactment aforesaid was never enrolled by the clerk of the house as required by said rule 7; that said pretended act or bill was never reported to either the house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never compared with the engrossed bill by a joint committee of the house of representatives

and senateas required by said rule ten; that said pretended bill was never signed by the speaker of the house of representatives nor the president of the senate as required by rule 11; that said pretended bill was not delivered to the governor of said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or senate of said State on the day the same was delivered or on any other day as required by rule twelve; that a certain law was duly enrolled, reported, and compared, signed, and delivered to said governor as required by said rules, but that subsequent to the delivery to said governor it was wrongfully interlined and interpolated so as to include the section relative to maximum rates relied upon by plaintiff herein and which, as enrolled, signed, and delivered to him, it did not contain, and that such pre-
63 tended law so wrongfully interlined, and interpolated, changed, and altered is the one referred to in plaintiff's petition, and is null, of no effect, and void.

III.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that the stations of Rogers and Springdale in said petition mentioned are on the line of the St. Louis, Arkan-as and Texas railway (of Arkansas), for the purpose of constructing which the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the northern boundary line of Arkansas, thence southwestwardly via Rogers and Springdale to Fayetteville, in said State.

That by the statutes of said State in force at the time of the incorporation of said railway company as aforesaid it was provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that while the legislature might when any such railroad should be opened for use from time to time alter or reduce the rates of tolls, fares, freights, or other profits upon such road, yet it was further provided that the same should not, without the consent of the corporation, be so reduced as to produce for said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended to be made by the secretary of state he should ascertain that the net income derived ,by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did annually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as to it should seem meet and proper.

64 That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its northern terminus with the railway of the St. Louis, Arkansas and Texas Railway Company (of Missouri), a corporation organized and existing under the general laws of the State of Missouri and owning a railroad extending from such northern terminus to the town of Plymouth, in Mo.

That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its southern terminus, which is 100 yards south of the present station at Fayetteville, with the railroad of the Missouri, Arkansas and Southern Railway Company, a corporation organized under the laws of the State of Arkansas and running from said southern terminus of the St. Louis, Arkansas and Texas Railway Company (of Arkansas) southwardly to the town of Ft. Smith, in the State last aforesaid.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railroad continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which belonged to or rested upon either of the companies making such consolidation.

That at said time it was also provided by the laws of said State of Missouri, which have remained and are yet in force, that any two or more railroad companies existing under either general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general

65 direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether without or within the State, and form one company owning and controlling said continuous line of railroad, with all the powers, rights, privileges, and immunities which rested upon either of the companies making such consolidation.

That on the 10th day of June, 1881, said three corporations last named consolidated their companies in the manner required by the laws of said States of Missouri and Arkansas into a corporation known as the St. Louis, Arkansas and Texas Railway Company (consolidated).

That at the time of such consolidation said Missouri, Arkansas and Southern — had not been completed yet; that the line proposed and which was afterwards constructed was laid out and surveyed through a mountainous and almost wholly uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was also the

St. Louis, Arkansas and Texas Railway Company (consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's petition mentioned are situated.

That the railways of the said last-named corporations connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis and San Francisco Railway Co. a corporation organized and existing under the general laws of the State of Missouri and the several acts of the Congress of the United States, and formed therewith a connecting line of railway running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of said States of Missouri and Arkansas that

66 any railroad corporation incorporated under the laws of the said State of Missouri might lease or purchase any part of a railroad with all its rights, privileges, franchises, immunities, real estate, and other property, the whole or a part of which was in the State of Missouri and constructed, owned, or leased by any other company, if the lines of the roads of said companies were connected and continuous, and that any railroad corporation incorporated under the laws of the said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease, or otherwise dispose of the whole or any part of its railroad, with all the rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining, to any connecting railroad or any railroad corporation then or thereafter organized or existing under the laws of the said State of Missouri or of the United States or of both.

That in the manner provided by the statutes of the said States of Missouri and Arkansas said St. Louis, Arkansas and Texas Railway Co. (consolidated) did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the St. Louis and San Francisco Railway Co. all of its railway in said States of Arkansas and Missouri, together with all the rights, privileges, franchises, and immunities thereunto belonging or appertaining.

And defendant avers that by the statutes of said State in force at the time said State of Arkansas did enter into a contract with said St. Louis, Arkansas and Texas Railway Co. (of Arkansas), by which the said State granted to said railway Co., its successors and assigns, the privileges and franchises of making and fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize the profit of fifteen per cent. per annum on its capital actually paid in.

67 That by the laws of said State in force as aforesaid it was also provided that any company with which said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) might consolidate should possess all the franchises, powers, rights, and privileges possessed at the time of such consolidation by the said last-named corporation; that by reason and force thereof said St. Louis, Arkansas and Texas Railway Co. (consolidated) acquired and possessed the same rights,

powers, privileges, and franchises which belonged or appertained to said St. Louis, Arkansas and Texas Railway Co. (of Arkansas).

That, relying upon the faith of the contract and agreement of said State of Arkansas with said railway Co. aforesaid that no regulation of its right to charge rates, fares,or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., and in express consideration thereof, said St. Louis and San Francisco Railway Company did purchase of said St. Louis, Arkansas and Texas Railway Company (consolidated) aforesaid its line of railway and did assume all of its debts and obligations in express consideration of obtaining the rights and privileges of exercising the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. upon the capital actually paid in of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) and the other consolidating companies.

That said railway, although completed for about five years, has never at any time earned profits in an amount equal to three per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) or of any of the consolidating companies aforesaid or of the said consolidated company; that the net earnings or profits of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in or on the amount actually expended in the construction of said lines of railroad aforesaid, and that if defendant is required to charge no
68 more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof.

And defendant avers that the incorporation of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas), the consolidation of the railroads as aforesaid, and the sale of the consolidated railroad to the defendant were each and all contracts made and entered into upon the faith that the contracts of the State of Arkansas with said several companies would not be broken.

And defendant avers that the consolidation of said companies as aforesaid and the sale by the company so formed of its railway to defendant each severally became and were compacts made between the States of Missouri and Arkansas with each other and with said consolidated company and the defendant, respectively, and to all of the rights, privileges, powers, and immunities belonging to the former the latter has succeeded; that the act of the legislature of Arkansas of 1887, attempting to fix passenger rates as aforesaid, in so far as it relates to defendant's line of railway, never received the assent of the State of Missouri nor of the defendant; that it is an infringement of the powers of the defendant and an impairment of the obligations of said compacts aforesaid, and an attempted interpretation of said compact, change, and alteration thereof by said State of Arkansas without the consent of the State of Missouri or of the defendant.

Wherefore defendant avers that the pretended law in plaintiff's petition mentioned is in violation of the laws and the constitution of

the State of Arkansas, impairs the obligations of the several contracts and compacts entered into upon the faith thereof as aforesaid, in violation of section ten, article 1, of the Constitution of the United States, and is null and void.

IV.

69 Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that the St. Louis, Arkansas and Texas Railway Company (of Arkansas), hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the dates thereof; that subsequently, to wit, in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas and Texas Railway Co. (of Missouri) and the Missouri, Arkansas & Southern Railway Co., whereby it did make joint stock with said companies forming the St. Louis, Arkansas and Texas Railway Company (consolidated).

That subsequently thereto said consolidated railway Co. did, in the manner required by the law in force at the time, sell and convey its railway franchises, and immunities thereto appertaining to this defendant; and defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the St. Louis, Arkansas and Texas Railway Co. (consolidated), to which the defendant company has succeeded, and under which an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford Co., Arkansas," approved July 3rd, 1882, and various other acts of the Congress of the United States and the general laws of the States of Missouri and Texas it is authorized to and does maintain and operate said line.

And defendant avers that by section six, article twelve, of the constitution of said State of Arkansas, in force at the several dates hereinbefore mentioned, it was provided that no charter of any corporation should be altered, revoked, annulled, or repealed in such a manner as to do injustice to the incorporators; that the present owners of the capital stock of the defendant company are the same and identical persons who incorporated and owned the entire capital stock of the St. Louis, Arkansas and Texas Railway Company (of Arkansas). Defendant avers that if said rates of fare in plaintiff's

70 petition mentioned are established as a maximum beyond which this defendant cannot charge it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's petition mentioned are situated is one which was highly expensive to construct and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintenance of the road in condition exceeds the price fixed as a maximum by the pretended

law aforesaid, to wit, the sum of three cents per mile. Wherefore defendant says that said pretended act is unreasonable and does this defendant and the incorporators of the said St. Louis, Arkansas and Texas Railway Co. (of Arkansa-), which constructed said line of railway, and their successors who succeeded to their rights and privileges a material injustice, and is, therefore, in violation of said constitution of Arkansas and is null and void.

V.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that the line of railway aforesaid in plaintiff's petition mentioned on which the stations therein described are located was constructed through a country which necessitated the expenditure of large sums of money, and which were much in excess of the usual and ordinary cost of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, trestles, and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the cost of three cents per mile; that the charge of five cents for carrying a passenger over each and every mile of road hereinbefore in this answer described is a reasonable, fair, and just charge, and that such sum is not an excessive charge for the transporting of passengers;
71 that the charge of five cents per mile being not excessive and the charge of three cents per mile being unreasonable and unjust, said law is unreasonable and authorizes the taking of private property for public use without just compensation or due process of law, in violation of the 5th and 14th amendments to the Constitution of the United States, is illegal and void.

VI.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that said pretended act discriminates between railroads of the same class in this, that railroads seventy-five miles or less in length owned by separate corporations and not operated by corporations which own other lines of railroad are permitted under the provisions thereof to charge the sum of five cents per mile, while other railroads of the same length and same class which may be operated and controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discriminations between different railroads of the same class and is therefore in conflict with and in violation of article II of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

And, for another and further answer to the 4th count of the petition of plaintiff herein, defendant avers that by the laws of the said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as if fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting
72 line there should remain and appertain to said line so consolidated all the rights, privileges, franchises, and immunities, liabilities, and obligations which appertained or belonged to said company before such consolidation, and that its condition for all purposes should remain the same as though no such consolidation had been effected; that said St. Louis, Arkansas Railway Company of Arkansas is less than seventy-five miles in length; and defendant avers that such being the case and the said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length the said defendant railway company had the right to charge the sum of 5 cents.

VIII.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, says that if the plaintiff was carried by the defendant, as in his petition mentioned, it was for the sole purpose of imposing upon the said railway Co. the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas; and defendant avers that said plaintiff was induced and encouraged to said action for the sole purpose aforesaid and was not a passenger for business, pleasure, or ordinary purposes, but for the sole purpose of speculating in said penalty.

Wherefore defendant says that the action herein sought to be maintained is opposed to public policy and the plaintiff should not be allowed to recover.

IX.

Defendant, for another and separate answer to the 4th count of the petition of plaintiff herein, says that any sum which the plaintiff herein may have paid the defendant company for services rendered by it in the carriage and transportation of the plaintiff as a passenger or otherwise was voluntarily paid, without protest or objection on the part of the plaintiff.

Wherefore defendant says that the plaintiff should not,
73 upon the facts in his petition stated, be allowed to recover herein.

X.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, avers that the line of railroad therein described is and was at the dates therein mentioned by an act of the Congress of the United States entitled "An act

granting the right of way to the State of Missouri," etc., approved June 10th, 1852, and an act of Congress entitled "An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific ocean," approved July 27th, 1866, and an act of Congress entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford Co., Arkansas," approved July 3rd, 1882, and an act of Congress entitled "An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw nations of Indians to the St. Louis and San Francisco Railway Co. and for other purposes," approved August 2nd, 1882, and various other *other* acts of the Congress of the United States declared to be a post and military route and national public highway of the United States for postal, other military, and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon, and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself, and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in plaintiff's petition mentioned is null and void as to this defendant.

74 XI.

Defendant, for another and further answer to the 4th count of the petition of plaintiff herein, says that previous to the consolidation of said lines as hereinbefore in this answer set forth, said St. Louis, Arkansas and Texas Railway Company (of Arkansas), being in need of money for the purpose of continuing its work of constructing its railroad, did place upon its property a deed of trust to secure the payment of five hundred thousand dollars of its interest-bearing seven per cent. bonds, which bonds were placed upon the market and sold to various and numerous *bona fide* purchasers, each and all of whom were induced to and did purchase such bonds upon the faith of the contract and agreement of the State of Arkansas with said railroad company, whereby it was agreed by the laws and constitution of the former that said company should have the right to charge such rates of fares and freights as would enable it to earn fifteen per cent. per annum upon the capital actually paid in and used in the construction of its line of railway and the constitutional guaranty of said State that the charter of said company, hereinbefore in this answer set forth, should not be altered, revoked, or annulled in such a manner that injustice should be done to the corporators; and defendant avers that if the defendant is required by the laws of said State or any pretented enactment thereof to charge no more than three cents per mile for each passenger carried by it its charter will be altered, revoked, and annulled in such a manner as to do material injustice to its corporators, and that thereby said company will be deprived of the power to earn not a suffi-

cient sum from the operation of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) to pay the annual interest on the bonds secured by the mortgage hereinbefore mentioned, and that if said pretended law in plaintiff's petition mentioned is enforced default will be made on the payment of the principal and interest of the bonds aforesaid.

75 *Answer to Fifth Count.*

Defendant, for answer to the 5th count of the petition of plaintiff herein, not waiving but expressly insisting that plaintiff's petition does not state facts sufficient to constitute a cause of action, and reserving the right to hereafter take advantage thereof, denies that — is the owner of or operating a line of railroad known as the St. Louis and San Francisco railway in Arkansas; denies that said railroad is more than seventy-five miles in length; denies that it is or was at the times in plaintiff's petition mentioned engaged, as a common carrier, in the transportation of passengers upon such a line of railroad between any points and stations, as in said petition alleged; denies that the maximum rate allowed by law to be charged by defendant for the transportation of any passengers in the manner in plaintiff's petition described over any line of road owned or operated by it in said State in the manner known as first-class passage is three cents per mile, and avers the fact to be — under the laws of said State it could rightfully charge the sum of five cents per mile for such service on any line of railroad owned or operated by it in said State; denies that on the 13th day of July, 1887, or at any other time, the plaintiff was transported by defendant, in the manner known as first-class passage, from Fayetteville to Springdale, a distance of ten miles, or any other distance, in the manner and under the circumstances in plaintiff's petition described or mentioned.

Denies that at the times aforesaid, or at any other, it did, in violation of plaintiff's rights, by way of compensation for the transportation of plaintiff between the points aforesaid, charge, demand, or receive of or from plaintiff the sum of five cents per mile for each mile intervening between such points.

Denies that plaintiff is entitled to or should recover the sum of $300.00 or any other sum herein.

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76 Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, avers that the law referred to in said petition is a pretended enactment of the legislature of the State of Arkansas known as "An act to regulate the rates of charges for the carriage of passengers by railroads," pretended to have been approved April 4th, 1887, but which in fact was never passed by the legislature of the State of Arkansas nor signed nor approved by the governor of said State in the manner required by the constitution and laws thereof; and defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plain-

tiff's petition mentioned provided that the legislature of said State should have and possess the power to make and determine rules of and for its proceedings; that the legislature whose pretended enactment is set forth in said petition did make, determine, and publish rules for its government, and which are and were known as the "joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887"; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee, composed of three members from each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and report the same forthwith to their respective houses.

11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the house
77 of representatives and then by the president of the senate.

12. When a bill has been signed by the speaker of the house and the president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of the respective houses.

And defendant further avers that the pretended enactment aforesaid was never enrolled by the clerk of the house as required in said rule 7; that said pretended act or bill was never reported to either the house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as required by said rule ten; that said pretended bill was never signed by the speaker of the house of representatives as required by said rule 11; that said pretended bill was not delivered to the governor of the said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or the senate of said State on the day the same was delivered or any other day as required by rule twelve; that a certain law was duly enrolled, reported, compared, signed, and delivered to said governor as required by said rules, but that subsequent to the delivery to said governor it was wrongfully interlined and interpolated so as to include the section relative to maximum rates

relied upon by plaintiff herein and which, as enrolled, signed, and delivered to him, it did not contain, and that such pretended law so wrongfully interlined, changed, and altered is the one referred to in plaintiff's petition, and is null, of no effect, and void.

78 III.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, avers that the stations of Fayetteville and Springdale in said petition mentioned are on the line of the St. Louis, Arkan-as and Texas railway (of Arkansas), for the purpose of constructing which the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the northern boundary line of the State of Arkansas, thence southwestwardly via Springdale to Fayetteville, in said State.

That by the statutes of said State in force at the time of the incorporation of said railway company as aforesaid it was provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that while the legislature might when any such railroad should be opened for use from time to time alter or reduce the rates of tolls, fares, freights, or other profits upon such road, yet it was further provided that the same should not, without the consent of the corporation, be so reduced as to produce for said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended to be made by the secretary of state he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did annually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as to it should seem meet and proper.

79 That said St. Louis, Arkansas and Texas Railway Company (of Arkansas) was connected at its northern terminus with the railway of the St. Louis, Arkansas and Texas Railway Company (of Missouri), a corporation organized and existing under the general laws of the State of Missouri and owning a railroad extending from such northern terminus to the town of Plymouth, in Mo.

That said St. Louis, Arkansas and Texas railway (of Arkansas) was connected at its southern terminus, which is 100 yards south of the present station at Fayetteville, with the railway of the Missouri, Arkansas and Southern Railway Co., a corporation organized under the laws of the State of Arkansas and running from said southern terminus of the St. Louis, Arkansas and Texas rail-

way (of Arkansas) southwardly to the town of Ft. Smith, in said State last aforesaid.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railroad continuing and running in the same general direction were authorized to consolidate their stock and make a joint stock with any connecting railroad company, whether within or without this State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which belonged to or rested upon either company, making such consolidation.

That at said time it was also provided by the laws of the said State of Missouri, which have remained and are yet in force, that any two or more railroad companies existing either under general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general direction were authorized to consolidate their stock and make joint
80 stock with any connecting railroad company, whether without or within the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which rested upon either of the companies making such consolidations.

That on the 10th day of June, A. D. 1881, said three corporations last named consolidated their companies in the manner required by the said States of Missouri and Arkansas into a corporation known as the St. Louis, Arkansas and Texas Railway Company (consolidated).

That at the time of such consolidation said Missouri, Arkansas and Southern — had not yet been completed; that the line proposed and which was afterwards constructed was laid out and surveyed through a mountainous and almost uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was also the St. Louis, Arkansas and Texas Railway Company (consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's petition mentioned are situated.

That the railways of the said last-mentioned corporations are connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis and San Francisco Company, a corporation organized and existing under the general laws of the State of Missouri and the several acts of the Congress of the United States, and formed therewith a connecting continuous line of railway continuing and running in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of the States of Arkansas and Missouri that any

railroad incorporated under the laws of the said State of Missouri might lease or purchase any part of a railroad with all its rights, privileges, franchises, immunities, real estate, and other property, the
81 whole or a part of which was in the State of Missouri and constructed, owned, or leased by any other company, if the lines of the roads of said companies were connected and continuous, and that any railroad corporation incorporated under the laws of said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease, or otherwise dispose of the whole or any part of its railroad, with all the rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining, to any connecting railroad or any railroad corporation then or thereafter organized or existing under the laws of said State of Missouri or of the United States or of both.

That in the manner provided by the statutes of the said States of Arkansas and Missouri said St. Louis, Arkansas and Texas Railway Company (consolidated) did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the St. Louis and San Francisco Railway Company all of its railway in said States of Arkansas and Missouri, together with all the rights, privileges, franchises, and immunities thereunto belonging or appertaining.

And defendant avers that by the statutes of said State in force at the time said State of Arkansas did enter into a contract with said St. Louis, Arkansas and Texas Railway Company (of Arkansas), by which the said State granted to said railway company, its successors or assigns, the privileges and franchises of making and fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize the profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the laws of said State in force as aforesaid it was also provided that any company with which said St. Louis, Arkansas and Texas Railway Company (of Arkansas) might consolidate
82 should possess all the franchises, powers, rights, and privileges possessed at the time of such consolidation by said last-named company; that by reason and force thereof said St. Louis, Arkansas and Texas Railway Company (consolidated) acquired and possessed the same rights, powers, privileges, and franchises which belonged or appertained to said St. Louis, Arkansas and Texas Railway Company (of Arkansas).

That, relying upon the faith of the contract and agreement of said State of Arkansas with said railway company aforesaid that no regulation of its rights to charge rates, fares, or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., and in express consideration thereof, said St. Louis and San Francisco Railway Company did purchase of said St. Louis, Arkansas and Texas Railway Company (consolidated) aforesaid its line of railway and did assume all of its debts and obligations in express consideration of obtaining all

the rights and privileges of exercising the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. per annum upon the capital actually paid in of said St. Louis, Arkansas and Texas Railway (of Arkansas) and the other consolidating companies.

That said railway, although completed for about five years, has never at any time earned in profits an amount equal to three per cent. on the capital actually paid in of said St. Louis, Arkansas and Texas Railway Company (of Arkansas) or of any of the consolidating companies aforesaid or of the said consolidated company; that the net earnings or profits of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in or on the amount actually expended in the construction of said lines of railroad aforesaid, and that if defendant is required to charge no more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof.

83 And defendant avers that the incorporation of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas), the consolidation of the railroads as aforesaid, and the sale of the consolidated railroad to the defendant were each and all contracts made and entered into upon the faith that the contracts of the State of Ark. with said several companies would not be broken.

And defendant avers that the consolidation of said companies as aforesaid and the sale by the company so formed of its railway to defendant each severally became and were compacts made between the States of Missouri and Arkansas with each other and with said consolidated company and the defendants, respectively, and to all the rights, privileges, powers, and immunities belonging to the former the latter has succeeded; that the act of the legislature of Arkansas of 1887, attempting to fix passenger rates as aforesaid, so far as it relates to defendant's line of railroad, never received the assent of the State of Missouri nor of the defendant; that it is an infringement of the powers of the defendant and an impairment of the obligations of said compacts aforesaid, and an attempted interpretation of said compacts, change, and alteration thereof by said State of Arkansas without the consent of the State of Missouri or of the defendant.

Wherefore defendant avers that the pretended law in plaintiff's petition mentioned is in violation of the laws and the constitution of the State of Arkansas, impairs the obligations of the several contracts and compacts entered into upon the faith thereof as aforesaid, in violation of section ten, art. 1, of the Constitution of the United States, and is null and void.

IV.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, avers that the St. Louis, Arkansas and Texas Railway Company (of Arkansas), hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the dates thereof; that

subsequently, to wit, in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter
84 into articles of consolidation with the St. Louis, Arkansas and Texas Railway Co. (of Missouri) and the Missouri, Arkansas and Southern Railway Co., whereby it did make joint stock with said companies forming the St. Louis, Arkansas and Texas Railway Co. (consolidated).

That subsequently thereto said consolidated railway Co. did, in the manner required by the law in force at the time, sell and convey its railway franchises and immunities thereto appertaining to this defendant; and defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the St. Louis, Arkansas and Texas Railway Co. (of Arkansas) and said St. Louis, Arkansas and Texas Railway Company (consolidated), to which the defendant company has succeeded, and under which — an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford Co., Arkansas," approved July 3rd, 1882, and various other acts of the Congress of the United States and the general laws of the State of Missouri and Texas it is authorized to and does maintain and operate the said line.

And defendant avers that by section 6, article 12, of the constitution of said State of Arkansas, in force at the several dates hereinbefore mentioned, it was provided that no charter of any corporation should be altered, revoked, annulled, or repealed in such a manner as to do injustice to the incorporators; that the present owners of the capital stock of the defendant company are the same and identical persons who incorporated and owned the entire capital stock of the St. Louis, Arkansas and Texas Railway Company (of Arkansas). Defendant avers that if said rates of fares in plaintiff's petition mentioned are established as a maximum beyond which this defendant cannot charge it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that
85 the railway on which the stations in plaintiff's petition mentioned are situated is one which was highly expensive to construct and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintenance of the road in condition exceeds the price fixed as a maximum by the pretended law aforesaid, to wit, the sum of three cents per mile. Wherefore defendant says that said pretended act is unreasonable and does this defendant and the incorporators of the said St. Louis, Arkansas and Texas Railway Co. (of Arkansas), which constructed said line of railway, and their successors who succeeded to their rights and privileges a material injustice, and is, therefore, in violation of said constitution of Arkansas and is null and void.

V.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, avers that the line of railway afore-

said in plaintiff's petition mentioned on which the stations therein described are located was constructed through a country which necessitated the expenditure of large sums of money and which were much in excess of the usual and ordinary cost of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts and fills, embankments, bridges, trestles, and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the cost of three cents per mile; that the charge of five cents for carrying a passenger over each and every mile of road hereinbefore in this answer described is a reasonable, fair, and just charge, and that such sum is not an excessive charge for the transportation of passengers; that the charge of five cents per mile not being excessive and the charge of three cents per mile being unreasonable and unjust, said law is unreasonable and authorizes the taking of private property for public use without just compensation or due process of law, in violation of the 5th and 14th amendments to the Constitution of the United States, is illegal and void.

86

VI.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, avers that said pretended act discriminates between railroads of the same class in this, that railroads seventy-five miles or less in length owned by separate corporations and not operated by corporations which own other lines of railroad are permitted under the provisions thereof to charge the sum of five cents per mile, while other railroads of the same length and same class which may be operated and controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discriminations between different railroads of the same class and is therefore in conflict with and in violation of article II of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

And, for another and further — to the 5th count of the petition of plaintiff herein, defendant avers that by the laws of the said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as if fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting line there should remain and appertain to said line so consolidated all the rights, privileges, franchises, and immunities, liabilities, and ob-

ligations which appertained or belonged to said company be-
87 fore such consolidation, and that its condition for all purposes should remain the same as though no such consolidation had been effected; that said St. Louis, Arkansas Railway Company (of Arkansas) is less than seventy-five miles in length; and defendant avers that such being the case and the said stations in plaintiff's petition being upon a line of railroad less than seventy-five miles in length the said defendant railway company had the right to charge the sum of 5 cents.

VIII.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, says that if the plaintiff was carried by the defendant, as in his petition mentioned, it was for the sole purpose of imposing upon the said railway Co. the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas; and defendant avers that said plaintiff was induced and encouraged to said action for the sole purpose aforesaid and was not a passenger for business, pleasure, or ordinary purposes, but for the sole purpose of speculating in said penalty.

Wherefore defendant says that the action herein sought to be maintained is opposed to public policy and the plaintiff should not be allowed to recover.

IX.

Defendant, for another and separate answer to the 5th count of the petition of plaintiff herein, says that any sum which the plaintiff herein may have paid the defendant company for services rendered by it in the carriage and transportation of the plaintiff as a passenger or otherwise was voluntarily paid, without protest or objection on the part of the plaintiff.

Wherefore defendant says that the plaintiff should not, upon the facts in this petition stated, be allowed to recover herein.

X.

The defendant, for another and further answer to the 5th
88 count of the petition of plaintiff herein, avers that the line of railroad therein described is and was at the dates therein mentioned by an act of the Congress of the United States entitled "An act granting the right of way to the State of Missouri," etc., approved June 10th, 1852, and an act of Congress entitled "An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific ocean," approved July 27th, 1866, and an act of Congress entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford Co., Arkansas," approved July 3rd, 1882, and an act of Congress entitled "An act to grant a right of way for a railroad and telegraph lines through the lands of the Choctaw and Chic-asaw nations of Indians to

the St. Louis and San Francisco Railway Co. and for other purposes," approved August 2nd, 1882, and various other acts of the Congress of the United States declared to be a post and military route and national public highway of the United States for postal and other military, and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rate of freights and fares to be charged for carrying persons and property thereon, and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself, and any interference and attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in plaintiff's petition mentioned is null and void as to this defendant.

XI.

Defendant, for another and further answer to the 5th count of the petition of plaintiff herein, says that previous to the consolidation of said lines as hereinbefore in this answer set forth, said St. Louis, Arkansas and Texas Railway Company (of Arkansas), being in
89 need of money for the purpose of continuing its work of constructing its railroad, did place upon its property a deed of trust to secure the payment of five hundred thousand dollars of its interest-bearing seven per cent. bonds, which bonds were placed upon the market and sold to various and numerous *bona fide* purchasers, each and all of whom were induced to and did purchase such bonds upon the faith of the contract and agreement of the State of Arkansas with said railroad company, whereby it was agreed by the laws and constitution of the former that said company should have the right to charge such rates of fares and freights as would enable it to earn fifteen per cent. per annum upon the capital actually paid in and used in the construction of its line of railway and the constitutional guaranty of said State that the charter of said company, hereinbefore in this answer set forth, should not be altered, revoked, or annulled in such a manner that injustice should be done to the corporators; and defendant avers that if the defendant is required by the laws of said State or any pretented enactment thereof to charge no more than three cents per mile for each passenger carried by it its charter will be altered, revoked, and annulled in such manner as to do material injustice to its corporators, and that thereby said company will be deprived of the power to earn not a sufficient sum from the operation of said St. Louis, Arkansas and Texas Railway Co. (of Arkansas) to pay the annual interest on the bonds secured by the mortgage hereinbefore mentioned, and that if said pretended law in plaintiff's petition mentioned is enforced default will be made on the payment of the principal and interest of the bonds aforesaid. Wherefore defendant prays judgment.

JOHN O'DAY,
E. D. KENNA, AND
B. R. DAVIDSON,
Att'ys for Def't.

90 *Date of Filing Complaint.*

On the back of which answer is the following indorsement:
No. 47. Gill *vs.* R'y Co. Answer. Filed in open court this 5th day of Nov., 1887. J. N. Tillman, clerk.

91 On this the 7th day of November, 1887, it being the 14th judicial day of the October term, 1887, of this court, the plaintiff filed a demurrer to the defendant's answer herein: which record of filing is in words and figures as follows:

Demurrer Filed.

JOHN B. GILL, Plaintiff,
vs.
THE ST. L. & S. F. R'Y CO., Defendant.

Comes the plaintiff, by attorney, and files a demurrer to the answer of the defendant herein.

On this the 7th day of November, 1887, the plaintiff filed his demurrer to the answer of the defendant herein; which demurrer is in words and figures as follows:

Demurrer to Answer.

STATE OF ARKANSAS,
County of Washington.

In the Circuit Court, October Term, 1887.

JOHN B. GILL, Plaintiff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Defendant.

Demurrer to the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th counts or paragraphs of def'ts answer.

92 Comes the plaintiff and demurrer's to the following counts (or paragraphs) in the defendant's answer herein, viz:

First. Counts II, III, IV, V, VI, VII, VIII, IX, X, and XI of its answer to the first count of plaintiff's petition because said counts do not set forth or state facts sufficient to constitute a defense.

Second. Counts two, three, four, five, six, seven, eight, nine, ten, and eleven of its answer to the second count of plaintiff's petition because said counts do not state facts sufficient to constitute a defense.

Third. Counts two, three, four, five, six, seven, eight, nine, ten, and eleven of its answer to the third count of plaintiff's petition because said counts do not state facts sufficient to constitute a defense.

Fourth. Counts two, three, four, five, six, seven, eight, nine, ten, and eleven of its answer to the fourth count of plaintiff's petition because said counts do not state facts sufficient to constitute a defense.

Fifth. Counts two, three, four, five, six, seven, eight, nine, ten, and eleven of its answer to the fifth count of plaintiff's petition because said counts do not state facts sufficient to constitute a defense.

J. V. WALKER,
Attorney for Plaintiff.

93 On the 9th day of November, 1887, the same being the 15th judicial day of the October term, 1887, of this court, upon the hearing of the demurrer to the defendant's answer herein filed, the court sustained the same, and this cause was submitted to the court, by consent, for trial and was tried and judgment rendered herein; which record of overruling the said demurrer and which said judgment *is* in words and figures as follows:

Judgment on Demurrer.

JOHN B. GILL, Plaintiff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Defendant.

On this day the demurrer to the answer of the defendant's herein coming on to be heard, the court, after argument, doth sustain each and every ground of demurrer to each and every count of the answer; to which ruling of the court the defendant at the time excepted. Thereupon the issues in this cause were submitted to the court, sitting as a jury, by consent of parties, upon certain facts admitted for the purposes of the trial and evidence offered before the court, and the court, after hearing the same and being advised fully, doth find the issues for the plaintiff on each and every count of the complaint, and doth find for the said plaintiff the sum of seventy-five dollars on each and every count, and doth assess the attorney's fee of fifty dollars on behalf of the plaintiff.

Judgment. Appeal Granted.

It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the defendant the sum of three hundred and seventy-five dollars, and the further sum of fifty dollars for attorney's fee herein and all his costs in this behalf expended; and comes the defendant and files its motion to
94 set aside the findings and verdict in this cause; which motion, coming on to be heard, is by the court overruled; to which ruling of the court in overruling said motion the defendant at the time excepted and prayed an appeal to the Supreme Court; which appeal is by the court granted, and, time being given, the defendant tenders here in court its bill of exceptions, containing all of the evidence, the motion for a new trial, and all of the acts and doings in this cause, which is by the court signed, sealed and made a part of the records of this cause.

Filing Bill of Exceptions.

On this the 9th day of November, 1887, the defendant filed and tendered in open court its bill of exceptions; which bill of exceptions is in words and figures as follows:

Bill of Exceptions.

STATE OF ARKANSAS, }
County of Washington. }

In the Circuit Court.

JOHN B. GILL, Plaintiff, }
vs. }
ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Defendant. }

Bill of exceptions.

95 Be it remembered that at the regular October term, 1887, of the circuit court of Washington county, Arkansas, the following, among other, proceedings were had in the above-entitled cause, to wit:

On the 7th day of November, 1887, it being the 14th judicial day of said term, the plaintiff filed his demurrer to the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh counts or paragraphs of defendant's answer to each of the five counts in plaintiff's petition contained, and which demurrer was in words and figures as follows, to wit:

(For demurrer see on page 91.)

And which paragraphs or counts so demurred to were in words and figures as follows, to wit:

See on pages 11 to 90, inclusive.

And which demurrer on the day last aforesaid came on to be heard by the court, and was duly argued, heard, and considered; whereupon the court did, on the day last aforesaid, sustain the said demurrer as to each and every count and paragraph of defendant's answer so demurred to as aforesaid; to which ruling of the court in sustaining said demurrer as to each, any, and all of said counts or paragraphs defendant then and there at the time excepted.

And thereupon, the day last aforesaid, the cause came on for trial before the judge of the circuit court, sitting as a jury,
96 and, before the introduction of any evidence, the defendant objected thereto, for the reason that neither the plaintiff's petition nor any of the counts therein contained stated facts sufficient to constitute a cause of action; which objection was heard by the court and overruled, and to which ruling the defendant then and there at the time excepted; whereupon the plaintiff, to sustain the issues upon his part, offered evidence as follows, to wit, the plaintiff read the following agreed statement of facts, to wit:

It is agreed, for the purpose of a trial between plaintiff and defendant herein, that the following facts stated in plaintiff's petition are true, to wit: That plaintiff is a citizen of Washington county, Arkansas; that at the several times in each of the five counts of plaintiff's petition contained the defendant owned and operated several lines of railroad in Arkansas; that the several lines of railroad so owned and operated by it were together more than seventy-five miles in length within said State of Arkansas, and that the towns of Rogers, Springdale, and Fayetteville, in said petition mentioned, were upon such lines of railroad; that on the 11th day of July, 1887, the plaintiff was transported by the defendant, in the manner known as first-class passage, from Springdale to Rogers, a distance of eleven miles; that at such time the defendant's officers in charge of such train received from him the sum of five cents per mile for each and every mile he was so carried.

That on the twentieth day of May, 1887, the plaintiff entered one of the cars of the defendant, which was upon one of the trains of defendant, and tendered to its officers in charge thereof a sum equal to three cents per mile for each and every mile between Springdale and Rogers; that such officers refused to accept said sum and demanded a sum equal to five (5) cents per mile; whereupon the train was stopped and the plaintiff left the same.

That on the thirteenth day of July, 1887, the plaintiff was
97 charged by defendant the sum of five (5) cents per mile for being carried by it over its railway from the town of Springdale to Rogers.

That on the 11th day of July, 1887, the plaintiff was charged by defendant the sum of five (5) cents per mile for each mile intervening between the stations of Rogers and Springdale upon its line of railway, and over which railway said plaintiff was on said day carried by defendant for the distance aforesaid.

That on the thirteenth day of July, 1887, the plaintiff was charged by defendant for being carried from Fayetteville to Rogers over its line of railway the sum of five (5) cents per mile for each and every mile intervening between said points or stations.

This was all the evidence introduced by the plaintiff.

Whereupon the defendant offered evidence under the first count of its answer, a demurrer to other counts having been sustained as follows, to wit:

It was admitted in open court by the plaintiff that the St. Louis, Arkansas and Texas Railway Company (of Missouri) was a corporation duly organized on the 31st day of July, 1880, for the purpose of constructing a railway from the town of Plymouth, a point in Missouri on the main line of the St. Louis and San Francisco railway, southwardly to the southern boundary line of the State of Missouri, a distance of 32.37 miles.

That the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was a corporation duly organized on the sixteenth day
of August, 1880, under the general laws of the State of Ar-
98 kansas, for the purpose of constructing a railway from the northern boundary line of the State of Arkansas at a point

where it is intersected by the southern terminus of the railway first above mentioned, thence southwardly via Springdale and Rogers to Fayetteville, in said State a distance of 37 miles.

That the Missouri, Arkansas and Southern Railway Company was a corporation duly organized on the 1st day of September, 1880, for the purpose of constructing a railway from the southern terminus of the railway last aforesaid at or near the town of Fayetteville southwardly to the town af Fort Smith, both in the State of Arkansas, a distance of about 67 miles.

That subsequently, on the 10th day of June, 1881, said three corporations, in the manner required by the laws of the States of Missouri and Arkansas in force at the time, did consolidate their companies and make joint stock with each other, forming thereby the St. Louis, Arkansas and Texas Railway Company (consolidated).

That subsequently, on the 22nd day of February, 1882, said St. Louis, Arkansas and Texas Railway Company (consolidated) did, by a good and sufficient deed of conveyance in the manner required by the laws of the States of Missouri and Arkansas, sell and convey its railway to defendant.

Defendant produced in open court the following witnesses, to wit: John O'Day, who is the vice-president and chief executive officer of the defendant company and who had also been president of the St. Louis, Arkansas and Texas Railway Company (of Arkansas) and also vice-president of the St. Louis, Arkansas and Texas Railway Company (consolidated); James Dunn, the chief engineer of the defendant company and who was a director in each of the corporations mentioned in defendant's answer and constructed the railway in plaintiff's petition mentioned; D. H. Nichols, the general superintendent of the defendant company's railway; D. Wishart, its general passenger agent; F. D. Russell, its general freight agent;
A. Douglas, its auditor, and who was an officer of the corpora-
99 tions who organized and who built the railway in plaintiff's petition mentioned; and various and numerous other expert witnesses who are traffic managers and general freight and passenger agents of other and different corporations having no interest in the defendant company; and defendant offered to prove by said witnesses, who were duly qualified and sworn, the following facts, to wit:

1st. That in the manner and time in the eleventh paragraph or count of defendant's answer herein set forth (before demurrer was sustained thereto) the St. Louis, Arkansas and Texas Railway Company (of Arkansas) did, on the 31st day of December, 1880, issue six hundred (600) of its thirty-year bonds, bearing six (6) per cent. interest, for the sum of one thousand ($1,000) dollars each, and secured the same by the mortgage of all its property, franchises, privileges, and immunities to the United States Trust Company of New York, which bonds were yet wholly due and unpaid and upon which defendant was required to annually pay the sum of thirty-six thousand ($36,000) dollars as interest.

2nd. That the line of railway in plaintiff's petition mentioned was only 37.43 miles in length.

3rd. That the persons who now own the capital stock of the de-

fendant company are the same identical persons who owned all of the capital stock of each of the companies which organized for the purpose of building the line of railroad in plaintiff's petition mentioned; that said stockholders of the defendant company furnished all of the money which was used in the construction of said line of railway in plaintiff's petition mentioned and were the original incorporators of the St. Louis, Arkansas and Texas Railway Company (of Arkansas), the St. Louis, Arkansas and Texas Railway Company (of Missouri), and the Missouri, Arkansas and Southern Railway Company, and were the only persons interested in such corporations and remained so until the consolidation; whereupon they became the owners of all the stock of the St. Louis, Arkansas and Texas Railway Company (consolidated) and remained so until said
100 corporation sold its line of railway to defendant.

4th. That the actual cost of defendant's line of railway over which plaintiff claims to have been carried amounted to the sum of forty thousand ($40,000) dollars for each and every mile thereof without as well as within said State of Arkansas; that this was in addition to the sum of six hundred thousand ($600,000) dollars obtained under the mortgage aforesaid to the United States Trust Company, and which was also expended in the improvement and completion of certain portions of such railway.

5th. That defendant has never at any time since the construction or completion of said lines of railway been able to earn from its sources of revenue of every name, nature, character, or kind derived from the ownership or operation of said railroad an amount which, after paying for the actual cash expenditures necessary for the operation of its trains and expenses incident thereto, would yield to the defendant or to the original incorporators a profit equal to one (1) per cent. upon the actual coast of said road or equal to one per cent. upon the capital stock actually paid up in cash and used in the construction of said lines of railroad, and which amounts to forty thousand ($40,000) dollars for each and every mile of its railway aforesaid.

6th. That if defendant is not permitted to charge a larger or higher maximum rate for the transportation of passengers than three (3) cents per mile, its earnings from all sources of every name and nature, character or kind, will not be sufficient to pay the expenses actually incurred in the operation of said railroad and the taxes thereon.

7th. That for years the business which it is reasonable to expect will be done by or can be brought to said company will not be sufficient to enable it to earn in profits an amount equal to one per cent. on the actual cost thereof or the amount of the capital stock actually paid up in cash and used in its construction.

101 8th. That the actual cost of carrying each passenger over that portion of defendant's railway in plaintiff's petition mentioned and set forth and over all of its railway therein referred thereto did, at the time therein mentioned and does now, exceed the sum of three (3) cents per mile for each and every passenger so carried in the manner known as first-class passage.

9th. That at the times in plaintiff's petition mentioned the defendant could not actually perform the service of carrying the plaintiff or any other passenger over its railway for the sum of three (3) cents per mile, but that the sum in cash which it was actually required to expend in the carriage of such plaintiff and other passengers was equal to three and three-tenths (3.3) cents for each and every mile such passenger was or passengers were carried, and that if defendant is required to perform the service at the rate of three (3) cents per mile it will also be required to expend more money in cash for the performance of such service than it would receive from same, and that the revenue or income which it would receive from all sources of profit other than from passenger traffic would not be sufficient to enable it to make in profits an amount equal to the amount which it would lose on its passenger business.

10th. That three (3) cents per mile for the service rendered by defendant in carrying passengers, at the times in plaintiff's petition mentioned, over the line of railroad therein described was not a reasonable compensation for the service performed, but that no less than five (5) cents per mile would be a reasonable sum or one which would be just to the defendant.

11th. That the plaintiff, at the times in his petition mentioned, was not a *bona fide* passenger upon the train or trains of the defendant, but was upon the same for the sole purpose of speculating in the penalties which he at the time expected to thereby have accumulate in his favor, and that he was not on such trains
102 traveling in the usual and ordinary course of business or for pleasure, but for the sole and single purpose of enabling him to bring suits against the defendant company.

That at the time the defendant offered to prove each and all of the facts aforesaid the plaintiff, in the order that such facts were offered, did separately object to each and all of the same on the ground that such evidence was incompetent, irrelevant, and immaterial, each of which objections was by the court separately sustained, and the defendant did then and there, at the time and as they were separately made, object and except to each of said rulings, said exceptions of defendant being taken separately upon the exclusion, by the order of the court, of each of the facts so offered in evidence by the defendant as aforesaid.

And thereupon defendant offered to read in evidence the following deposition of Jas. Dun; which deposition is in words and figures as follows, to wit:

JAS. DUN, being produced, sworn, and examined on the part of the defendant, deposeth and sayeth as follows: I reside in St. Louis, Mo.; am a civil engineer by profession and for the past ten years have been the chief engineer of the St. Louis and San Francisco Railway Company, having as such the superintendence of all lines of road constructed by that corporation and charge of their maintenance after their construction. I was chief engineer of the St. Louis, Arkansas and Texas Railway Company (of Missouri), of the St. Louis, Arkansas and Texas Railway Company (of Arkansas),

and of the Missouri, Arkansas and Southern Railway Company. After their consolidation I was chief engineer of the St. Louis, Arkansas and Texas Railway Company (consolidated) and superintended the location and construction of all that line of railway extending from Plymouth, Missouri, to Fort Smith, Arkansas. I was also a director and small stockholder in each of the corporations which consolidated their stock into the consolidated line of
103 railroad which I have mentioned. In the construction of this line of railway extraordinary expense was incurred and which was necessitated by the peculiar nature of the country traversed by it. A great deal of money was spent in surveying and engineering in order to find a practical location through the region, and it was a long time before we could secure a location that was at all practical between the Arkansas State line and the Arkansas river. The construction of the lines of railway which I have mentioned required us to move about 1,278,000 cubic yards of loose rock and about 338,490 cubic yards of solid rock. This was all in addition to the earth embankments which were built by us. We were also required to bore a tunnel through the Boston mountains 1,693 feet in length. The bridging and trestles were very expensive items. There are three iron trestles from 90 to 120 feet in height and aggregating 1,658 feet in length. There is also the bridge across the Arkansas river at Van Buren, which is made of iron and steel, 1,798 feet in length, and which cost several hundred thousand dollars. There are 29 truss bridges built of wood and iron, aggregating 3,029 lineal feet, and 152 trestles, aggregating 11,045 lineal feet. The cost of bridging on this line alone (between the State line and Fort Smith) has been over $800,000. A great expense was also incurred in the foundation and masonry to insure the safety of the structures resting on them. Besides bridges above mentioned, 6,616 lineal feet of trestles, averaging 48 feet in height, has been replaced by solid embankments and masonry since the road has been in operation, and large expenditures are being made annually to still further improve the character of the road so as to render it as nearly safe as it is possible to do. The landslides in the Boston mountains have given us great trouble and caused great expense and still require constant attention and a very careful operation of trains over that portion of the line, although we have expended over $100,000 solely for the purpose of removing these slides. Exceptionally heavy grades and curves are required on this line, which
104 greatly increases both the cost of operation and maintenance. The average lifetime of a steel rail is about twenty years, but we have already made very extensive renewals of steel rails on the line, although it has been in operation but six years. The St. Louis, Arkansas and Texas Railway Company (consolidated) sold all of its property to the St. Louis and San Francisco Railway Company about in February, 1882. The track at this time was laid to a point south of Fayetteville and north of Van Buren. At the time of the sale the St. Louis, Arkansas and Texas Railway Company (of Missouri) and the St. Louis, Arkansas and Texas Railway Company (of Arkansas) were the only lines of the three lines pur-

chased of the consolidated company which were completed. The defendant completed the road from Fayetteville to Fort Smith. The cost of the operation of this line has been materially increased by washouts, which have occurred in deep hollows or sharp ravines, and against which it was impossible to provide. Some of these have resulted in considerable loss to the company. There are many sharp curves on this line and it is almost a succession of heavy grades. All of the St. Louis, Arkansas and Texas Railway Company (of Arkansas) was completed at the time of the sale to the defendant except the work of filling up the large trestles on the line and notably the ones at Avoca and Blansett. Spring Dale, Rogers, Garfield, and Fayetteville are all the towns on the line of the St. Louis, Arkansas and Texas Railway Company (of Arkansas.) This railway is 37.43 miles in length.

JAMES DUN.

To the reading of which deposition plaintiff objected as being incompetent and irrelevant, and which objection was sustained by the court; to which ruling of the court the defendant then and there at the time excepted and objected.

This was all of the evidence in the case; whereupon the court, upon the day last aforesaid, made its findings for the plaintiff in the sum of three hundred and seventy-five dollars (375.00);
105 and on the same day, to wit, on the 9th day of November, 1887, it being the 15th judicial day of said term, October term, 1887, of the circuit court aforesaid, the defendant filed its motion for a new trial in said cause; which said motion was in words and figures as follows:

STATE OF ARKANSAS, }
County of Washington. }

In the Circuit Court of Washington County, Arkansas.

JOHN B. GILL, Plaintiff, }
vs. } Motion for a New Trial.
ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, Defendant. }

Comes now the defendant, The St. Louis and San Francisco Railway Company, and moves the court to grant it a new trial and set aside the judgment rendered in the above-entitled cause, and for its reasons therefor assigns the following:

1. Because said court erred in sustaining plaintiff's demurrer to the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th counts of defendant's answer.

2. Because the court erred in sustaining plaintiff's demurrer to any of the counts in defendant's answer mentioned above.

III. Because the court erred in sustaining the demurrer to each and every count or paragraph mentioned in the demurrer filed by the plaintiff herein.

IV. Because the court erred in overruling defendant's objection to the introduction of any evidence under plaintiff's petition.

V. Because plaintiff's petition did not state facts sufficient to constitute a cause of action.

VI. Because the court erred in admitting irrelevant, incompetent, and immaterial evidence offered by the plaintiff and objected to at the time by the defendant.

VII. Because the court erred in excluing proper, competent and relevant testimony material to the issues in this case,
106 offered by the defendant.

VIII. Because the court erred in refusing to allow the defendant to introduce competent and relevant testimony material to the cause.

IX. Because under the law and the evidence the finding and judgment of the court should have been for the defendant.

X. Because under the uncontradicted evidence the plaintiff was not entitled to recover.

XI. Because in the trial of the cause the defendant was deprived of its property and rights without due process of law.

XII. Because in the trial of the cause defendant's property, rights, privileges, and immunities were taken for public use without just compensation.

XIII. Because in the trial of the cause the obligations of numerous contracts entered into upon the faith and credit of the constitution and laws of the State of Arkansas were permitted to be impaired.

XIV. Because the finding of the court and judgment are contrary to the constitution and laws of the State of Arkansas.

XV. Because the finding of the court and judgment are contrary to the Constitution of the United States and in violation of article 1, subdivision 10, of said Constitution and the 5th and 14th amendments thereto.

XVI. Because the court erred in refusing to allow the defendant to introduce evidence to show that the plaintiff was not a *bona fide* passenger.

XVII. Because the court erred in allowing plaintiff to recover on more than one count of his petition.

XVIII. Because in any event the finding of this court should have been for plaintiff upon the only one of the several counts in plaintiff's petition.

JOHN O'DAY,
E. D. KENNA, AND
B. R. DAVIDSON,
Attorneys for Defendant.

107 Which motion, after being duly argued, heard, and considered, was by the court overruled; to which ruling the defendant then and there at the time objected and excepted.

It therefore prays the court to allow and sign this its true bill of exceptions in the cause aforesaid, and that the same may be signed and sealed and made a part of the record herein, which is accordingly done in open court this the 9th day of November, 1887.

J. M. PITTMAN, [SEAL.]
Judge of the Circuit Court of Washington County, Arkansas.

108 On this the 8th day of December, 1887, comes the defendant herein and files its supersedeas bond herein; which supersedeas bond is in words and figures as follows:

Supersedeas Bond.

In the Washington Circuit Court.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Appellant,
vs.
JOHN B. GILL, Appellee.
} Supersedeas Bond.

Whereas the appellant, The St. Louis and San Francisco Railway Company, has taken an appeal from the judgment of the Washington circuit court, rendered at its October term, 1887, against it and in favor of the appellee, John B. Gill, for the sum of three hundred and seventy-five dollars and fifty dollars additional for attorney's fee, in all for the sum of four hundred and twenty-five dollars, with costs, and the appellant desires to sup-r-de said judgment: Now we, H. F. McDaniel and J. S. McDaniel, sureties, hereby covenant with the said appellee that the said appellant will pay to the appellee all costs and damages that may be adjudged on the appeal against the appellant, and also that it will satisfy and perform said judgment in case it shall be affirmed and any judgment or order which the supreme court may render or order to be rendered by the inferior court, not exceeding the amount or value the judgment aforesaid.

Witness our hand this the 8th day of December, 1887.

H. F. McDANIELD.
J. S. McDANIELD.

Approved by me this the 8th day of December, 1887.

J. N. TILLMAN, *Clerk.*

109 *Certificate to Transcript.*

STATE OF ARKANSAS, }
County of Washington. }

I, J. N. Tillman, clerk of the circuit court of Washington county, Arkansas, do hereby certify that the foregoing 111 pages *is* a true and perfect transcript of the record, papers, proceedings, acts, and doings had and done in the case of John B. Gill against The St. Louis and San Francisco Railway Company, tried in the Washington circuit court at its October term, 1887. Said transcript was called for at once by appellant, but owing to some of the papers being mislaid and to press of business was not furnished sooner.

In witness whereof I have hereunto set my hand and affixed the seal of my office as clerk of said court on this 2nd day of February, 1888.

[L. S.] J. N. TILLMAN, *Clerk.*

And I further certify that the following is a correct statement of the fees due the following parties in said cause as consolidated:

Fee Bill.

She'ff's fees	$2 50
Clerk's fees & Co. taxes	14 75
This transcript & cert., p'd by def't	38 65
Total	$55 90

110 *Caption.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the 27th day, being the fourth Monday, of May, A. D. 1889, amongst others were the following proceedings, to wit, on the 11th day of November, 1889, a day of said term:

Submission.

ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* JOHN B. GILL, Appellee.	Appeal from Washington Circuit Court.

Come the parties, by attorneys, and this cause is argued orally and submitted upon the briefs filed and by the court taken under advisement.

Judgment of the Supreme Court.

ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* JOHN B. GILL, Appellee.	Appeal from Washington Circuit Court.

Judgment sup. court.

JAN'Y 3RD, 1891.

This cause came on to be heard upon the transcript of the record of the circuit court of Washington county, and was argued by counsel. On consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is, therefore, considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

And it appearing to the court that said appellant, with H. F. McDanield and J. S. McDanield, as sureties, has filed a supersedeas bond

in this cause, it is further considered that said appellee re-
111 cover of said appellant and H. F. McDanield and J. S. McDaniel the sum of four hundred and twenty-five dollars, with interest at 6 per cent. per annum from the 9th day of November, A. D. 1887, the amount of judgment of said circuit court, and the further sum of forty-two dollars and fifty cents, being ten per cent. thereon, and costs.

It is further considered that said appellee recover of said appellant and said sureties all his costs in this court and the court below in this cause expended and have execution thereof as well as of said judgment.

112 *Opinion.*

In the Supreme Court of Arkansas, Jan. 3rd, 1891.

ST. L. & SAN FRAN. R'Y CO. *v.* GILL. } No. 32.

HEMINGWAY, *J.*:

The questions presented by this appeal depend upon the sufficiency of ten several paragraphs of the answer of the defendant below, appellant here, to each of which a demurrer was sustained. There was a trial upon one paragraph and verdict and judgment for the plaintiff.

In the second paragraph it was alleged that the act of April 7th, 1887, entitled An act to regulate the rates to be charged by railroads for the carriage of passengers, was not passed by the several houses of the General Assembly in accordance with their joint rules, and that the bill as passed did not contain any provision limiting the rates that could be charged for the transportation of passengers. The joint rules of the General Assembly were creatures of its own, to be maintained and enforced, rescinded, suspended, or amended as it might deem proper. Their observance was a matter entirely subject to legislative control and discretion—not subject to be reviewed by the courts; that the act as passed contained a clause limiting passenger rates was settled by this court in Dow *v.* Beidelman, 49 Ark., 325.

The substance of the ninth paragraph is that the appellee voluntarily paid the alleged overcharge, and that he therefore could not recover. Whether the conclusion would follow if he sought to recover the amount of the overcharge we need not decide; a volun-
tary payment of the overcharge does not preclude a recovery
113 for the statutory penalty. The eighth paragraph sets up that the plaintiff went upon the defendant's train not for the purpose of ordinary business or pleasure, but for the sole purpose of accumulating penalties against it, and that it would be against public policy to allow him to maintain this action, and thereby speculate in penalties. The act was not intended to provide a compensation for the injured passenger, but to deter railroad companies from taking excessive fares by punishing every such act. Each overcharge is in violation of law, and every payment of it is a legal

wrong to the party making it, who is thereby aggrieved within the meaning of the act, and by its express terms entitled to sue. Fisher *v.* R'w'y Co., 46 N. Y., 644; Parks *v.* Nashville, etc., R'w'y, 13 Lea, 1; S. C., 18 A. & E. R. R. Cas., 404.

In the sixth paragraph it is alleged that by virtue of various acts of Congress the line of defendant's road is declared a post and military route and national highway for postal, military, and all other governmental services, and is subject to be regulated only by act of Congress; that it became such by grants of land and right of way from the Government, and is thereby exempt from State regulation. We do not appreciate the force of this defense. We do not understand that a grant of lands or of a right of way over lands by the Government confers immunity from State regulation upon its grantee.

The remaining paragraphs of the answer contain objections by which, as it is claimed, the act in question is shown to be in conflict with the provisions of the State and Federal constitutions. As they contain many repetitions of the same allegations, varying only in the different paragraphs in respect of form, we will state and consider them together. They are substantially as follows:

114 That the alleged overcharges were made for passage on that part of the defendant's road formerly owned by the St. Louis, Arkansas and Texas Railway Company in Arkansas; that said company was duly organized under the general laws of the State of Arkansas in 1880; that by the laws then in force, and which were a part of its contract with the State, it was provided that said corporation, its successors or assigns, might fix such rates of fare as to it should seem proper, but that the legislature might alter or reduce its rates, provided that no such reduction should be made until the net proceeds of its road for one year had exceeded fifteen per cent. of its capital actually paid in, and provided further that such rates should not be so changed as to produce a profit below fifteen per cent. as aforesaid; that in accordance with the general laws of the States of Arkansas and Missouri said St. Louis, Arkansas and Texas Railway Company, on the 10th day of Feb'y, 1881, was consolidated with two other corporations in the name of the St. Louis, Arkansas and Texas Railway Company, consolidated, which latter company succeeded to all the property, power, privileges, rights, and immunities which belonged to either of the consolidating companies.

That at the time of the consolidation the road of the original Arkansas corporation had not been completed, and that it and the consolidated corporation were without means to complete the road.

That on the 2nd day of Feb'y, 1882, the consolidated company, by the authority and in pursuance of the general laws of the States of Arkansas and Missouri, sold and conveyed to the appellant all its railroad in said State, together with all its rights, privileges, franchises, and immunities thereunto belonging or appertaining, the appellant assuming, in consideration thereof, all the debts and obligations of the consolidated company; that the appellant

115 thereby succeeded to the rights of the consolidated company under its contract with the State, to fix such reasonable rates

of fares for the transportation of passengers as would enable it to realize a profit of not less than fifteen per cent. per annum of its capital actually paid in.

That the road of said consolidated company has been completed for five years and has never earned during any year profits to exceed three per cent. on the capital actually paid in, and that neither of the consolidating roads had earned profits during any year in excess of such rate; that the net earnings of said consolidated road for the next two years would not exceed three per cent. on the capital actually paid in, or on the amount actually expended on the consolidating lines, and that if appellant is required to charge no more than three cents per mile for the carriage of passengers on said line of railway its earnings will be so reduced that no profit whatever will inure to its owners, and such earnings will not pay reasonable interest on the fixed indebtedness actually incurred in constructing the road.

That the formation of the original company, its consolidation with others, and the sale by the consolidated company each and all constitute contracts between the State and said several companies, entered into upon the faith that each of said several companies should have the right to fix its rates for the carriage of passengers at any sum it might deem proper which would not produce an annual net profit on the capital actually paid in to exceed fifteen per cent.; that the act in question alters the said several contracts and is in violation of section 10, art. 1 of the Federal Constitution.

That by section 6, art. 12, of the constitution of Arkansas, in force at the several dates aforesaid, it is provided that no charter of any corporation shall be altered, revoked, annulled, or repealed
116 in such a manner as to do injustice to the corporators and that the act is in violation of said provision.

That the line on which the stations named are located contains heavy grades, many cuts and fills, bridges, trestles, embankments, and tunnels, the construction of which cost, and the maintenance of which does and will continue to cost, extraordinarily and unusually large sums of money, and that it is reasonable and just to charge five cents per mile for carrying passengers over said line; that to limit its passenger rate to three cents per mile takes its property without compensation, in violation of the 5th and 14th amendments to the Federal Constitution.

That it is special legislation and discriminates against the defendant in this, that it permits a company operating seventy-five miles of road or less to charge five cents per mile, passenger fare, but prohibits a company operating more than that length of road from charging that amount for a passage not exceeding that distance, in violation of article 11 of the State constitution and of section 1 of the 14th amendment to the Federal Constitution.

That the defendant's road is made up of roads that formerly belonged to different companies, and the stations named are situate on a line which, as formerly owned, was less than seventy-five miles in length; that therefore the former owner might have charged

five cents per mile fare, and the appellant, as its successor, acquired the right to make the same charge.

That before the consolidation of the companies before named the St. Louis, Arkansas and Texas R'y Co. in Arkansas, for the purpose of constructing its road, mortgaged its property to secure bonds which were placed on the market and sold to purchasers who in good faith relied upon the observance on part of the State of
117 its contract with the company relative to fixing its passenger rates; that said bonds are unpaid, and if the appellant is permitted to charge no more than three cents per mile for carrying passengers the earnings of the road of the original company will be insufficient to pay the interest on said bonds and default will be made therein; that the act is therefore unconstitutional.

In the view that we have taken of the law, it will be unnecessary to go into the discussion of the act as affected by the provisions of the Federal Constitution relied upon by the appellant. When the St. Louis, Arkansas and Texas Railway Company in Arkansas was organized the constitution of the State contained the following provisions:

"Sec. 6, art. 12. Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke *or* annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators."

"Sec. 11, art. 12. Foreign corporations may be authorized to do business in this State, under such limitations and restrictions as may be prescribed by law: Provided, That no such corporation shall do any business in this State, except while it maintains therein one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served; and, as to contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State; and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this State; nor shall they have power to condemn or ap-
118 propriate private property."

These provisions have ever since been and now are a part of the fundamental law of the State. They entered into and became a part of the contract between the State and the corporations concerned in this cause. By their terms the State was authorized to alter, revoke, annul, or repeal all charters of corporations thereafter created in this State whenever, in the opinion of the General Assembly, such charter is injurious to citizens of the State; the only limitation upon the power is that it shall not be so exercised as to do injustice to the corporators. It is provided that foreign corporations may be admitted to do business in the State upon certain conditions, and that upon compliance therewith they shall conduct

their business subject to the same regulations, limitations, and liabilities as like corporations of this State, and shall exercise no other or greater powers, privileges, or franchises than may be exercised by like corporations of this State.

The appellant purchased its line in this State subject to the provisions just mentioned. Though the statute then in force for the regulation of rates to be charged for the transportation of passengers permitted a higher rate to be charged than that allowed by the act in question, the appellant knew that all such acts were subject to legislative change. Thus warned, it elected to come into the State to operate a railroad. It thereby undertook and became bound to do it according to the terms and conditions imposed upon domestic corporations. It bound itself to the State by contract that it would conform to such rates of charges as the State might fix, provided they worked no injustice to its corporators. If the act in question violates that provision, the act must fail; otherwise it must
119 stand. To all other objections that may be urged against the act, it is sufficient to reply *consensus facit jus*. We therefore pass without discussion the clauses relied upon in the Federal Constitution and address ourselves to the single inquiry, Do the allegations of the answer disclose that the act is unjust to the incorporators of the appellant?

For the purpose of this case we have not felt called — to decide whether the question of the justice or injustice of the act is political and for the sole determination of the general assembly, or judicial and subject to be investigated in the courts, nor have we considered how far the determination of that question is control-ed by the recent decisions of the Supreme Court of the United States in what is known as the Minnesota railway cases. We treat it as a question within the cognizance of the court, but reserve a decision thereon until a case is presented which calls for it.

We are of opinion that the answer and argument in its support rest upon erroneous conceptions of the law. It appears from the answer that the appellant operates a continuous line of railroad from Fort Smith, in this State, to the city of St. Louis, in Missouri; that the line as owned and operated when the act in question passed comprises a road constructed by the appellants and one purchased by it, which latter was made up by consolidating the roads of three different companies. The transportation for which the charges complained of were made was over that part of appellants' road which was formerly a part of one of the consolidating roads. The answer seeks to test the justice of the act, not by its effect on the net earnings of the entire road of the appellants, but by its effect upon the net earnings of that portion of its road acquired by purchase, as well as of that part formerly owned by one of the consolidating companies. But that is not the correct test. The
120 appellant cannot claim the right to earn a net profit from every mile, section, or other part into which its road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative. It can only claim a profit from the operation of its entire line, and attack as unjust an act that

denies it the right to fix such rates as will yield a profit upon its aggregate business. The corporations owning the several parts of the road as to which it is charged that the act operates unjustly were dissolved years before it was passed. As to them it could not operate unjustly, and in their behalf no cause of complaint can exist. The lines, though once independent, are now parts of a whole, and any division of it into its original parts for the purposes of the act in question is arbitrary. There is as much reason to divide the line according to sections or stations or into divisions of a designated mileage and demand the right to charge for service upon each part a rate sufficient to make the operation of that part alone, independently of other parts, remunerative. If an act were to be thus tested, it would be necessary in each case to ascertain what part of the line was included in the trip, and then determine what charge was necessary to make the business of that part profitable. That would involve the ascertainment of what expense was incurred in operating the particular division alone, but, as there are other general expenses not incurred in operating any other division more than the one in question, it would be necessary to compute them and apportion a just part to the designated division. It would then be necessary to ascertain what the road could earn at the rate fixed from rece-pts arising exclusively from the business of the particular part
121 and its *pro rata* of receipts from business done in part over it and in part over other divisions. It could then be seen whether the expense of operating the particular division exceeds the receipts under the rate proposed. In what proportion the several parts should share with others in the expenses and receipts in which they participated it would be difficult to determine. In fact, the problem proposed would be difficult, if it did not baffle solution. If, upon the examination, it was ascertained that division A could earn a profit at a rate of three cents per mile for passengers, as to it the act would be valid, but if it was ascertained that division B would sustain a loss unless permitted to charge five cents per mile, the act as to it would be invalid. If it could be conceived that with such an issue to be submitted to a jury a decision would ever be reached in two different causes, a remarkable result might be anticipated. It would then be judicially determined that a law fixing three cents as the maximum would be constitutional as regulating rates from Fayetteville to the next station south, but unconstitutional as regulating the rates from Fayetteville to the next station north. Such a condition would be rendered improbable only because it is exceedingly improbable that two cases would be prosecuted to a termination in the life of any one person.

We think it must be evident that, to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the appellant, the earnings of its entire line must be estimated as against all its legitimate expenses under the operation of the act. But we think that a more enlarged scope should be given the inquiry to decide the question properly, and the justice of the act should be determined by its effect upon classes and not by its effect upon single members of classes. The

122 parent company was organized and the appellant began its business in this State after the adoption of a policy by the State with reference to corporations that marked a change in that regard. It has been usual to create corporations, grant privileges, and limit powers by special act of the legislature; it was then provided by the constitution that no special act of incorporation should be passed, and that all corporations should be formed under general laws. In pursuance of the changed policy the act was passed providing for the organization of railway companies. As the powers of corporations were conferred and defined by general laws, so the State indicated its policy to regulate their enjoyment and exercise by laws likewise general. The provision relied upon by the appellant from the act of July 23, 1868, authorizing railway companies to regulate passenger fares, was general in its terms and applied to all railroads in the State. The act in question, though it classifies roads for the purpose of regulation, is general, for it prescribes the same regulations as applicable to each member of a class. It would therefore be unreasonable to test the rate fixed for any class by its effect upon a single member of the class. One member might be so situated that at a given rate of fares its earnings would be large, while another member at the same rate, but affected by different conditions, perhaps temporary, such as destructive competition, wasteful management, or limited business, could not earn expenses. Neither of said members, the one enjoying favorable circumstances nor the one suffering from unfavorable circumstances, would furnish the proper criterion by which to judge the rate proposed; whether it would be just or unjust should be determined by its effects upon those operating under usual and ordinary conditions.

123 The appellant nowhere alleges that the rate fixed by the act in question is unjust as applied to other roads in its class or that it cannot be adopted by them without any unjust impairment of their earnings. We think it follows, if roads may be classified for regulation, that the justice or injustice of the regulation must be determined with reference to its effect on the class and not a particular member of it. Any other rule would lead to confusion, almost chaos, in the law. An act held valid as to one member of a class might be held invalid as to another, and no adjudication would remove or lessen the uncertainties as to the effect of an act. We do not mean to imply that the act, under the construction given it, is free from the objection that the question of its legality is undetermined after the adjudication of any one case. If the question of constitutionalty is to be determined by a judicial inquiry into the reasonableness of the limit prescribed, it is obvious that the result in each case would depend upon the facts developed in it and the conclusions drawn therefrom, thus varying as the facts in proof varied and as different trial tribunals might differ in viewing them. It would be better for all concerned, the public, the corporations, if the law provided some means for testing the reasonableness of the rates prescribed before they were to become operative in a proceeding in which the corporations contesting it and the public, through

its representatives, would have an opportunity to be heard. The final determination in such a proceeding should be conclusive as to that fact and determine the legal status of the act, and if it was sustained a defense of its unreasonableness should not be entertained in an action like this. The plaintiff in an action of this character has not the facilities or interest to present the matter as it should be in a controversy so wide in its scope, affected by circum-
124 stances so universal and complex. The burden of the litigation is too great for the return. While we think the law should be as we have indicated we cannot conclude that it is, although a somewhat similar principle was contended for by the late Justice Miller in a separate opinion in the Minnesota cases.

It was ruled in Dow *v.* Beidelman, *supra*, that the classification of roads for regulation of rates was proper.

Affirm.

125 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y, Appellant, *vs.* JOHN B. GILL, Appellee.	Application for Allowance of Writ of Error.

To the Hon. S. R. Cockrill, chief justice of the supreme court of Arkansas:

Comes the St. Louis and San Francisco R'y Co., by its attorneys, B. L. Donaldson & Clayton, Brizzolara & Forrester, and complain that in the record and proceedings, and also in the rendition of a judgment in a suit between John B. Gill, plaintiff, and the St. Louis and San Francisco R'y Co., defendant, in the supreme court of the State of Arkansas, being the highest court of law or equity in said State in which a decision could be rendered in said suit, in which a final judgment was rendered against it, the aforesaid defendant, on the 3rd day of January, A. D. 1891, who was the appellant in said proceeding, wherein was drawn in question the construction and validity of section 10, art. 1st, and the 5th and 14th amendments of the Constitution of the United States of America and the statutes of the United States, and the decision was against the title, rights, privileges, and franchises specially set up, based upon, claimed, and founded under and upon the construction and validity of the aforesaid sections, articles, and amendments of the Constitution of — United States of America and the aforesaid statutes of the United States—all of which appears in the record, pleadings, and proceedings in said suit—manifest error hath happened, to the great damage of the St. Louis and San Francisco R'y Co.:

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

B. L. DAVIDSON, CLAYTON, BRIZZOLARA & FORRESTER, *Attorneys.*

LITTLE ROCK, ARK., *Jan'y 17th*, 1891.

Allowed.

S. R. COCKRILL,
Chief Justice.

126 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y, Appellant,
vs.
JOHN B. GILL, Appellee. } Bond.

Know all men by these presents that we, James Brizzolara and Henry M. Cooper, are held and firmly bound unto John B. Gill in the full and just sum of one thousand dollars, to be paid to the said John B. Gill, his executors, administrators, or assigns; to which payment, well and truly to be *named*, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 17th day of January, A. D. 1891.

Whereas lately, at a session of the supreme court of the State of Arkansas, in a suit pending in said court between John B. Gill, plaintiff, and The St. Louis and San Francisco R'y Co., defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit and a citation directed to the said John B. Gill, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next:

Now, therefore, the condition of the above obligation is such that if the said St. Louis and San Francisco R'y shall prosecute its said writ of error to effect and answer all damages and costs — it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES BRIZZOLARA. [SEAL.]
HENRY M. COOPER. [SEAL.]

Approved:
S. R. COCKRILL, *Ch. Justice of Ark's.*

127 STATE OF ARKANSAS:

In the Supreme Court.

I, William P. Campbell, clerk of the supreme court of the State of Arkansas, hereby certify that the foregoing 126 pages contain a

full, true, and complete transcript of the record and proceedings in said court in the cause therein stated, except the briefs of counsel.

In testimony whereof I hereto set my hand as clerk and affix the seal of said court at my office, in the city of Little Rock, this 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk*.

Endorsed on cover: Case No. 14,650. Arkansas supreme court. No. 173. The St. Louis & San Francisco Railway Company, plaintiff in error, *vs.* John B. Gill. Filed May 18, 1891.